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# Roscoe Pound and American Sociology: A Study in Archival Frame Analysis, Sociobiography and Sociological Jurisprudence

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ROSCOE POUND AND AMERICAN SOCIOLOGY:  
A STUDY IN ARCHIVAL FRAME ANALYSIS, SOCIOBIOGRAPHY,  
AND SOCIOLOGICAL JURISPRUDENCE

by

Michael Ray Hill

A DISSERTATION

Presented to the Faculty of  
The Graduate College in the University of Nebraska  
In Partial Fulfillment of Requirements  
For the Degree of Doctor of Philosophy  
Major: Sociology  
Under the Supervision of Professor Miguel Carranza

Lincoln, Nebraska

May 1989

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**TITLE**

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SOCIOBIOGRAPHY, AND SOCIOLOGICAL JURISPRUDENCE

**BY**

Michael Ray Hill

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ROSCOE POUND AND AMERICAN SOCIOLOGY:  
A STUDY IN ARCHIVAL FRAME ANALYSIS, SOCIOBIOGRAPHY,  
AND SOCIOLOGICAL JURISPRUDENCE

Michael Ray Hill, Ph.D.

University of Nebraska 1989

Adviser: Miguel Carranza

Roscoe Pound (1870-1964) was a noted botanist, jurist, and sociologist who founded the American school of sociological jurisprudence. Pound's sociological ideas originated at the University of Nebraska. Pound developed numerous ties to other sociologists, joined the American Sociological Society, and published in the American Journal of Sociology. Pound's modern erasure from sociological chronicles is attributed in part to hegemonic processes.

The collection of archival data for this study in the history of sociology is generalized (by extending Erving Goffman's metatheory of meaning) as "archival frame analysis." Pound's intellectual milieu is analyzed using Mary Jo Deegan's theory of "core codes" from her analysis of *communitas* and alienation in American ritual dramas.

Pound was pragmatically committed to social scientific research for improving the "law in action." He directed major surveys of criminal justice systems in Cleveland and China. His Criminal Justice in Cleveland is an exemplar of

sociological methodology and theoretical insight. The bureaucratic ecology of the National Commission on Law Observance and Enforcement is examined in a parallel biography of three Nebraska-trained scholars (Roscoe Pound, Edith Abbott, and Hattie Plum Williams) who served the Commission.

Pound also explored the institutional patterns of law. Building chronologically-ordered systematic classifications of legal theories, he traced the complexity of conflicting patterns in the social institution of law. These analyses gave him the philosophical basis of sociological jurisprudence.

The heart of sociological jurisprudence is Pound's "theory of interests": social control requires informed adjustments between competing social interests. Adjudication of conflicts must not rely on rigid interpretations of precedents, but must take account of social change and relevant social scientific data. Pound's theory is deeply liberal and steeped in the American progressivism of the early twentieth century. Weaknesses in Pound's theory mirror his unreflexive acceptance of the biases of his white, male, professional world. Nonetheless, Pound's sociological critique of law was progressive, insightful, and foundational.

This work is  
dedicated  
to

**The Founders of Nebraska Sociology**

Edith Abbott  
Lucile Eaves  
Charles Ellwood  
George Elliott Howard  
Roscoe Pound  
Edward Alsworth Ross  
Mary Tremain  
Amos Griswold Warner  
Hutton Webster  
Hattie Plum Williams

## PREFACE

Reflexive Statement

The Association for Humanist Sociology, of which I am a member, requires that all papers submitted for review to Humanity and Society "be preceded by a reflexive statement which briefly states the author's values and perspectives with respect to the subject matter" in the work.<sup>1</sup> In keeping with the spirit of this policy, the following statement is provided.

I am an interdisciplinary student of the social and human sciences. I believe in the merits of cooperation, both practical and intellectual, between scholars in the artificially separate human sciences. Trained initially in the techniques and philosophy of the positivist perspective, I acknowledge its serious limitations while retaining my continuing admiration for the positivist emphasis on clarity and systematic argument. At core, I am a systems theorist who gladly receives as input the insights of feminism, phenomenology, Marxism, and symbolic interactionism.

For me, the present project is partially an exploration of my intellectual and institutional roots. Though born in Kentucky, I received my primary socialization in rural, small town Iowa and, after age ten, was schooled almost entirely in Nebraska, at Omaha Mason Grade School, Waterloo

High School, Omaha Benson High School, the Municipal University of Omaha, Creighton University, and the University of Nebraska-Lincoln. My sense of identity as a Nebraskan has been considerably enriched to learn of the early sociological work conducted at the University of Nebraska by the likes of Amos G. Warner, George Elliott Howard, Edith Abbott, Charles Ellwood, Edward Alsworth Ross, Lucile Eaves, Hutton Webster, Hattie Plum Williams, and Roscoe Pound.

As a student who continues to pursue research interests in a variety of seemingly disparate topics (to the dismay and perplexity of more discipline-bound academics), I take considerable heart in Roscoe Pound's interdisciplinary accomplishments. While I have come to see significant limitations to Pound's theory of social interests, I commend his reasoned and humane effort to conceptualize society as an open system in which its participants can with diligence, compassion, and relevant research make a just and meaningful difference in the shape and direction of social institutions. I join those humanist sociologists who contend that sociology can never be value-free nor divorced from the political realities of everyday life.



### Acknowledgments

My father, the Reverend Ray Kelley Hill (nee Raymond Hilligoss, Jr.), died at age seventy-five in 1986, a few months after my coursework and comprehensive examinations in sociology were completed. His lifelong support and respect for intellectual work are fundamental to my continuing scholarly endeavor. My work on a second doctorate never impressed him as unusual. A former English teacher, he taught me to read before I entered kindergarten and took me (at age five) to apply for my first library card. When his parish duties found us in a school district that offered neither geometry nor Latin, he insisted I study these topics through correspondence courses. During his service in the Presbyterian ministry in Nebraska, he lost several posts for refusing "to play politics." His principled, scholarly example rarely wavered. In his later years, he pursued a systematic, unfinished study of Karl Barth's Church Dogmatics. At age seventy, he began making annual trips to France to study each summer in an American seminary in Paris. His testy but reasoned critiques of my sociological excursions are sorely missed. At the time of his death, neither he nor I had any inkling of the historical turn my dissertation eventually took. I like to think he would have found my present inquiry grist for more than a few trenchant observations about intellectual life in Nebraska.

This project was shaped by the structural support, interpersonal encouragement, and advice of the members of my doctoral Supervisory Committee in sociology: Miguel Carranza (Chair), Robert Benford, Alan Booth, Jerry Cloyd, and Robert Stoddard (External Member). Professor Carranza guided me through the academic minefields and provided the necessary intellectual latitude I needed to grab hold of this project and establish what promises to be a fruitful foundation for sociological investigation beyond the present study. Professors Booth and Stoddard, the official dissertation Readers, reviewed my drafts with insight, diligence, and remarkable dispatch.

These scholars contributed not only through service on my supervisory committee, but also through courses and seminars. Professor Carranza's Seminar in Race Relations sensitized me to issues developed in Chapter 9. In Professor Booth's Seminar in Urban Sociology, I continued my interest in urban ecology and first came in contact with many of the specifically sociological approaches to issues relevant to Chapters 6 and 7. His course on Program Evaluation touched directly on matters raised in Chapter 6. Professor Cloyd's Seminar on Collective Behavior introduced me to social movements and thus sharpened my appreciation of law reform as an organized social project, a theme touched upon in Chapter 5. Professor Stoddard, who has seen me

through several years of my "double life" in sociology and geography, taught me the delights of systematic fieldwork in his Field Methods and Spatial Statistics courses, his Seminar in Regionalization, and several independent study projects in geography; all proved useful foundation for the methodological discussions in Chapters 3, 6, and 7. His thorough treatment of taxonomic classification helped order my thinking in Chapter 8. Professor Stoddard chaired my doctoral work in geography and I am gratified that he accepted the invitation to work with me again. Professor Benford came to Nebraska after my sociology coursework was complete, but his support of my continuing interest in Goffman's "frame analysis," utilized in Chapter 2, is warmly appreciated. To these patient scholars and teachers, I owe great thanks.

In addition to those serving on my dissertation committee, two other scholars at the University of Nebraska made major contributions directly relevant to the present project. First, Professor Mary Jo Deegan started me on the road to sociological theory in her Seminar on Contemporary Theory many years ago when I was still in the midst of my work in geography. In her Seminar, my interest in Goffman's "frame analysis" began, and under her tutelage in 1976 I read Frame Analysis in detail. Her mentoring leads directly to my frame analytic exploration of archival research in

Chapter 2. Her theory of "core codes" in her American Ritual Dramas is the analytic basis of Chapter 4 and provides a conceptual thread that runs throughout this study. Most recently, in 1987, I profited from auditing her Seminar on the political thought of George Herbert Mead. The idea of taking a close look at the early history of Nebraska sociology originated in that seminar in discussions among Mary Jo Deegan, Michael Ball, Bruce Keith, and myself. Professor Deegan's critical, epistemological interest in historical sociology is reflected throughout this project, especially in Chapters 2, 4-7, and 9, and her interest in methods and theory in Chapters 2, 8, and 9. Were it not for the fact that we are now life-partners, Mary Jo would most certainly be a member of my supervisory committee.

Second, Professor Werner Leinfellner, formerly of the Department of Philosophy at the University of Nebraska, patiently guided my epistemological explorations during his courses on the Philosophy of Science, his Seminar on the Philosophy of the Natural Sciences, and in numerous informal conversations. I felt the imprint of his teaching throughout this project, especially in Chapter 9. He served on my Supervisory Committee in geography with understanding and dependability (despite his many trips to Austria to organize the international Wittgenstein conferences). To Vienna, I send best wishes for his continuing work.

For his unique interest in Roscoe Pound and his expert advice on matters archival, I am indebted to David Wigdor, Assistant Chief, Manuscripts Division, Library of Congress, Washington, D.C.

My appreciation for the diachronic perspective stems in part from my earliest year of graduate training in geography (from which I took an extended and productive excursion in my subsequent doctoral studies to focus on the predominantly synchronic aspects of human spatial behavior with Professors Robert Stoddard and Douglas Amedeo). My first semester of graduate school in 1967 found me in Professor Leslie Hewes' then obligatory Cultural Geography course. There, he exhorted us with missionary zeal to study the historical pattern of "man's role in changing the face of the earth." In his subsequent Seminar on Historical Geography, he introduced us to data locked in brittle maps, dog-eared soil surveys, and out-of-print texts. Under his unrelenting gaze, I mapped, town-by-town, the spatial and temporal evolution of "the urban frontier" in the midwestern United States.

Professor C. Barron McIntosh enthusiastically demonstrated the precise use of archival meteorological data to reconstruct past atmospheric events in his Seminar on Synoptic Climatology. The direct result was presentation of my first paper (on the effects of the 1940 November freeze

on the Nebraska apple-growing industry) at the Nebraska Academy of Sciences, twenty years ago. Throughout the subsequent years, Professor McIntosh's personal commitment to exhaustive historical research in archives and county courthouses across Nebraska (in his unrelenting search for "patterns in the land") has been a continuing inspiration to me.

No less important are scholars who have influenced me through written works rather than face-to-face instruction. Mari Sandoz' Old Jules and Capital City, C. Wright Mills' The Causes of World War Three, Shulamit Reinharz' On Becoming a Social Scientist, Anthony Giddens' The Nation-State and Violence, and Michel Foucault's Discipline and Punish, are varied, informed exemplars of historical and critical perceptiveness in social analysis that have particularly moved me in recent years. My attempt to put Harriet Martineau's 1838 methodological classic, How to Observe Morals and Manners, into modern perspective took me on unexpected paths into archival and bibliographic history. Finally, my indebtedness to Erving Goffman's relevant but largely ahistorical Frame Analysis is evident in the pages that follow.

In her role as life-partner, Mary Jo Deegan saw me through changes of topic, expensive trips to archives, boring drafts, academic perfidies, a protracted and frustrating illness, and occasional self-doubt. Her boundless enthusiasm and support for my work are fundamental ingredients in this project. Not a day passed in which I did not garner new and significant sociological insight as a result of our frequent and serious intellectual discussions. Her researches in culture, social theory, sexual oppression, and the history of sociology (all culminating in her publication of Jane Addams and the Men of the Chicago School, 1892-1918) are my daily reminders of the very best that sociology can offer.

Jiping Zuo, a fellow graduate student in the Department of Sociology, helped enormously by translating the substance of Wen-pei Chang's (1967) Chinese-language volume on Roscoe Pound.

For partial financial support during the execution of this project, I thank the University of Nebraska-Lincoln for providing an Alice Frost Howard Fellowship, 1988; and a Maude Hammond Fling Dissertation Travel Award, 1988.

The personnel and material resources of several libraries were placed at my disposal with a willingness that bespeaks a wondrous institutional commitment to intellectual endeavor. I am especially indebted to the following

individuals (alphabetically arranged) and their staff associates who helped make my research visits not only comfortable, but also productive: Sarah Bass, Librarian, Roscoe Pound Library, Association of Trial Lawyers of America, Washington, D.C.; Lynn Beideck-Porn, University Archives, University of Nebraska-Lincoln; James Cassedy, Archivist, U.S. National Archives and Records Administration, Suitland, Maryland; Janet Hargate, Chief of Branch, U.S. National Archives and Records Administration, Suitland, Maryland; Kevin B. Leonard, Associate University Archivist, University Archives, Northwestern University Library; Judith W. Mellins, Manuscripts Associate, Special Collections Department, Harvard Law School Library, Harvard University; Daniel Meyer, Archivist, Special Collections, Joseph Regenstein Library, University of Chicago; Harold L. Miller, Reference Archivist, State Historical Society of Wisconsin, Madison, Wisconsin; and Joseph G. Svoboda, Archivist, University Archives, University of Nebraska-Lincoln.

Professional staff members of the following additional libraries, whose resources I also consulted in connection with this project, gave valuable assistance: College of Law Library, University of Nebraska-Lincoln; Law Library, University of Michigan; Law School Library, University of Wisconsin-Madison; Library of Congress, Washington, D.C.;



Lincoln City Libraries, Lincoln, Nebraska; Memorial Library, University of Notre Dame; Memorial Library, University of Wisconsin-Madison; Maude Preston Memorial Library, St. Joseph, Michigan; Schlesinger Library, Radcliffe College; Special Collections, University of Illinois at Chicago; University Archives, Pusey Library, Harvard University; University Archives, University of Iowa; University Libraries, University of Michigan; Dwight B. Waldo Library, Western Michigan University; and Widener Memorial Library, Harvard University.

For materials and consultations via telephone and the mails, I am particularly indebted to: Emmett Chisum, Research Historian, American Heritage Center, University of Wyoming; Dale Mayer, Archivist, Herbert Hoover Presidential Library. National Archives and Records Administration, West Branch, Iowa; and Charlotte W. Smith, Legal Information Services Coordinator, Roscoe Pound Library, Association of Trial Lawyers of America, Washington, D.C.

Several friends and colleagues helped immensely through pragmatic acts of material support, words of encouragement, and other deeds of friendship. Especially important to me were the members of the Nebraska Sociology History Project: Michael Ball, Mary Jo Deegan, Bruce Keith, and Agnes Riedmann. Their contributions to my edited special issue on "The Foundations of Nebraska Sociology" (forthcoming in

Mid-American Review of Sociology) and to our joint -- and as yet unpublished -- book project on Nebraska sociology, Frontier Dreams and Visions, helped me better understand the place of Roscoe Pound's work in the wider context of the "Nebraska school" of sociology. Working together, we have set the foundations for the continuing excavation and critique of Nebraska's sociological heritage.

Scott and Pat Wendt of Bluestem Books could be counted on for needed out-of-print volumes and a cheery greeting when I needed one. Sending letters from afar, Dietrich Garbrecht, Jack Johnson-Hill, Valorie Malhotra, Shulamit Reinharz, and Al Roberts (all active members of my invisible college), kept my spirits bright with periodic communications. I am grateful also for the recordings of Joan Armatrading, Jimmy Cliff, Jacqueline DuPre, and Robert Palmer. Their respective musical talents kept me sane. Emma, who played ball and wagged her tail whenever I came home from the library, was more help than a dog can know.

Michael R. Hill

Lincoln, Nebraska

April 15, 1989

#### Note for Preface

1. Humanity and Society 11(November 1987): iii.

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## CHAPTER ONE

### WAS ROSCOE POUND A SOCIOLOGIST?

The sociology of law in the United States  
has had its most elaborate and detailed, its most broadly  
conceived and subtle expression in  
the rich scientific production of Dean Pound,  
the unchallenged chief of  
the school of "sociological jurisprudence."

-- Georges Gurvitch<sup>1</sup>

Roscoe Pound (1870-1964) was an eminent and accomplished American sociologist. This is his story. The following resume is as remarkable as it is well-known, and can be abstracted from most standard biographical reference works in virtually any library. Born in Lincoln, Nebraska, Pound began his formal education in the University of Nebraska's preparatory Latin School, took the Classics course as an undergraduate, and received his bachelor's degree in 1888. Majoring in botany, he earned a master's

degree in 1889. Pound apprenticed in his father's law firm and in 1889-1890 took a year of study at the Harvard University Law School. Upon his return to Lincoln, he was admitted to the bar, practiced in his father's firm and began doctoral studies in botany. His Ph.D., the first awarded in botany at the University of Nebraska, was bestowed in 1897. In short order, Pound became a Nebraska Supreme Court Commissioner in 1901, and was made Dean of the University of Nebraska College of Law in 1903. In 1906, he became the first law professor to address the American Bar Association, where his analysis of "The Causes of Popular Dissatisfaction with the Administration of Justice" simultaneously sparked condemnation and admiration in the legal world. In 1907, he was called to Northwestern University Law School, there cofounding the American Institute of Criminal Law and Criminology in 1909. During 1909-1910, he was Professor of Law at the University of Chicago, and in autumn 1910 was appointed Story Professor of Law at Harvard University. In 1916, he was made Dean of the Harvard University Law School, a position he held until 1936, when he became the first University Professor at Harvard. His influential approach to law was known as "sociological jurisprudence." He was a member of prestigious scientific and scholarly societies and authored

nearly 1000 published works, including books, articles, research reports, and reviews.

There is no doubt that Pound was a distinguished scholar and jurist, but nowhere in such accounts, save the tantalizing reference to "sociological jurisprudence," is there serious mention of Pound's major contributions to the discipline of sociology. This study began with the straightforward question, "Was Roscoe Pound a sociologist?" The answer, detailed in the following chapters, is clearly affirmative. Moreover, Pound was an especially accomplished sociologist whose ideas deserve critique and whose disciplinary contributions merit recognition in the chronicles of modern sociology.

The story of Roscoe Pound's sociological career is filled with paradox, irony, and structural misadventure. Accounts of his sociological work suffered terribly in hegemonic social reconstructions of the disciplinary history of sociology. In a significant sense, the data presented here are not "new." The specifics of Pound's contributions to sociology have been discovered in the archival traces left by some of the most powerful and well-known founders of American sociology, including Edward A. Ross and Albion Small. During the first quarter of the twentieth century, Roscoe Pound's sociological work was known, read, and greatly admired by numerous and influential sociologists.

The story of Roscoe Pound's sociological contributions should not be "news" today, but, surprisingly, it is.

Answering the question whether someone is or is not a sociologist is a two-fold inquiry. It involves discovering and documenting the specifics of a sociological career. Further, it involves the interpretation of those facts. That is, in addition to the historical record per se, a larger question is also at issue: "What is a sociologist?" Answers to the latter question, as Deegan (1987, 1988c) has shown, are as much political in character as they are simply a matter of clarity and classification. It is a facile maneuver in sociological theory today to dismiss the relevance of earlier scholars with variations on the statement, "They were not sociologists" (Deegan 1987). Thus, the definition and classification of who qualifies as "a sociologist" has serious epistemological ramifications. If defined as "not a sociologist," their work and ideas are systematically excised not only from the disciplinary record, but from the corpus of received sociological theory.

Was Roscoe Pound a sociologist? The following pages clearly document that his disciplinary contributions were far more numerous, foundational, and central than those of Lawrence J. Henderson, a relatively unknown Harvard physiologist, to whose work is devoted an entire volume in the late Morris Janowitz' Heritage of Sociology Series

(Henderson 1970). If Henderson was a sociologist, why not Roscoe Pound?

Dirk Kasler (1981), in attempting to reconstruct the history of German sociology, defined a sociologist as anyone who fulfilled at least one of the following criteria:

- occupy a chair of sociology and/or teach sociology.
  - membership in the German Sociological Society.
  - coauthorship of sociological articles or textbooks.
  - self-definition as a "sociologist."
  - definition by others as a sociologist.
- (Kasler, quoted in Deegan 1988c: 9)

Deegan (1988c) used these criteria to demonstrate that Jane Addams, too often and too easily dismissed as merely a social worker or social reformer, was in fact a sociologist. If one substitutes the American Sociological Society for the German Sociological Society, Addams met all of Kasler's criteria.

The following pages show that (1) Pound taught sociology courses at Harvard university in the Department of Sociology from 1941 to 1947 and sat with Pitirim Sorokin and Talcott Parsons on the examining committees of sociology doctoral students specializing in the sociology of law, (2) that Pound was an active member of the American Sociological Society for a quarter of a century, (3) that Pound authored several articles published in the American Journal of

Sociology and contributed chapters to books edited by sociologists, (4) that although Pound's primary identity lay with jurisprudence (which he defined as a social science), he was proud of having taught law from a sociological perspective, and (5) that his work was defined as sociological by others, including Albion Small who considered Pound's contributions a keystone of American sociology after 1906. In addition, (6) Pound was a colleague and confidant of some of America's leading sociologists, including George Elliott Howard, Edward A. Ross, and Albion Small. On professional committees and various sociological projects, he worked with myriads more, including Edith Abbott, Jane Addams, Sophonisba Breckinridge, Jerome Davis, Charles Ellwood, Franklin Giddings, Sheldon and Eleanor Glueck, Georges Gurvitch, Charles Henderson, and others. One might argue that some of Kasler's criteria are more significant than others, but the relevant point here is that, like Jane Addams, Pound met them all, and then some.

Was Pound a sociologist? When I first asked this question, I did not know the facts enumerated in the paragraph above. I turned to the published literature, the standard histories of the discipline, and Sociological Abstracts for an answer. The results were sufficiently meager to discourage any but a stubborn Nebraskan, trained



as a geographer, who had in the process of bibliographic digging discovered that Pound might also be a plant geographer of some standing. I was hooked, but the standard literature search was far from helpful. Modern sociological accounts are essentially silent where Pound is concerned, with the exception of a few specialist critiques in sociology of law or criminology (and these rarely give Pound's work more than a grudging sentence or a minor footnote). Indeed what few accounts I encountered initially suggested a negative finding. For example: that Pound was not widely versed in sociology (Alan Hunt 1978), that Pound was nothing more than an ideological apologist for corporate liberalism (Schwendinger and Schwendinger 1974), or, generally, that Pound "was a jurist" (with no mention of the possibility that he might also be a sociologist). If Pound had played a significant role in sociology, the curtain had been drawn on his performance, leaving barely a trace. An inventory of sixty-five "introduction to sociology" textbooks revealed no mention whatever of Roscoe Pound, save two among the older texts consulted (MacIver and Page 1949; Horton and Chester Hunt 1964).<sup>2</sup>

Was Roscoe Pound a sociologist? My search for an answer took me across town and out of sociology proper to read law journals, to examine the footnotes in Pound's legal writings. There, Pound cited the likes of Emile Durkheim,

Albion Small, Herbert Spencer, E.A. Ross, Lester Ward, and Max Weber. If Pound wasn't a sociologist, he certainly thought and wrote like one. Did Pound publish as a sociologist? The card catalogue at the University of Nebraska was mute except for references to Pound's legal writings (it was only at the University of Iowa Library that I discovered David Wigdor's (1974) helpful biography of Pound). Sociological Abstracts and Social Science Citations Index are guides to the relatively recent past, and are little help when asking questions about the publishing habits of the founders of American sociology. The cumulative index to the American Journal of Sociology, however, quickly revealed Pound's publications, not only in that journal, but in the relatively obscure Papers and Proceedings of the American Sociological Society, and the latter documented Pound's membership in the American Sociological Society. In quick succession, Pound now met two of Kasler's criteria. Was Pound a sociologist? The probability of an affirmative answer increased dramatically. The question in my mind became, "To what extent was Pound a sociologist?"

My ensuing search through archival records in Nebraska, Iowa, Illinois, Massachusetts, Wisconsin, and Washington, D.C., is outlined below in Chapter Two. The robust story of Pound's active life as a sociologist unfolded only through

the discovery and piecing together of data stored in archival collections of correspondence, reports, unpublished manuscripts, obscure pamphlets, and other "one-of-a-kind" materials. There are, however, no methodological treatises to guide such work, work that is fundamental to the reconstruction of sociological history and epistemology. Thus, Chapter Two reviews "history of sociology" as a research enterprise and, using the concepts of Erving Goffman, presents my "frame analysis" of the archival research process.

My first major archival excursion gave the details of Pound's work as a graduate botany student. Here were the taproots of Pound's intellectual socialization, the first mature signs of scholarly genius and superlative organizational skill, his penchant for classificatory analysis, and his love of academic playfulness. Chapter Three documents the origin of the Seminarium Botanicum, a student scientific society organized and led by Pound at the University of Nebraska. Pound's doctoral work in botany, coauthored with Frederic Clements, became the foundation of the American school of plant ecology. Years later, Clements' work fed directly into the the ecological school of sociology at the University of Chicago, and Pound later reviewed the Chicago ecological work of Clifford Shaw and Henry McKay from his perspective as a trained ecologist.

Concurrent with his botanical training, Pound also explored the institution of law, reading widely in its philosophical and theoretical literature.

In 1901, the year Pound was made a Nebraska Supreme Court Commissioner, Edward A. Ross arrived in Lincoln to become Professor of Sociology at the University of Nebraska. The two men met, and through their discussions Pound was increasingly drawn to sociology as a perspective from which to launch a thorough critique of the judiciary. The story of Pound's introduction to sociology is inextricably interwoven with the story of the founding of sociology at the University of Nebraska. Not only had Pound's story not been told, but the excitement and vitality of Nebraska sociology during this era also lay buried and largely forgotten. Pound, who taught part-time at the University of Nebraska, was elevated to Dean of the Law School in 1903, becoming a full-fledged faculty colleague of E.A. Ross, and in 1904, of George Elliott Howard. Pound was in stellar company, as both Ross and Howard would become Presidents of the American Sociological Society.

Chapter Four recounts Pound's introduction to sociology and sketches the character of the academic community at the University of Nebraska from 1901 to 1907. By using Mary Jo Deegan's (1989b) widely applicable analysis of American ritual dramas and her theory of "core codes,"

the contending forces between *communitas* and alienation on the Nebraska campus are placed in bold relief. The playful participation of Ross and Pound in the 1903-1905 Faculty Carnivals, and their joint support (with Howard) of a proposed interdisciplinary School of the Social Sciences in 1905, stand in sharp contrast to Pound's frustrations as a law school administrator in an increasingly bureaucratized university. Unable to reestablish the bonds of *communitas* broken by the core codes of oppression and repression, Pound sought refuge in a series of increasingly prestigious appointments in elite, privately-endowed universities.

In 1907, Pound moved to Chicago where he became Professor of Law at the downtown campus of Northwestern University. There, Pound was inducted into the American Sociological Society and introduced to the powerful center of American sociology at the University of Chicago in Hyde Park. Chapter Five documents Pound's professional, organizational activities as a sociologist and his maturing friendships with George Elliott Howard and E.A. Ross. In 1909, Pound chaired the organization of the American Institute of Criminal Law and Criminology, to which he drew the interdisciplinary participation of sociologists Jane Addams, Edith Abbott, Charles Ellwood, Charles Henderson, Maurice Parmelee, E.A. Ross, and others.

Chapter Five documents Pound's membership and participation in the American Sociological Society (starting sometime after 1906, but before 1910) and his long friendship with Albion Small, the Chair of the Department of Sociology at the University of Chicago and the powerful editor of the American Journal of Sociology. Pound actively participated as a presenter at the Society's meetings (he was the keynote speaker for the 1920 meeting) and participated on two of the Society's committees (one of which led directly to Pound's signature on the historic declaration on academic freedom adopted in 1916 by the American Association of University Professors). Sometime after 1931, but before 1936, Pound left the American Sociological Society after concluding that the new generation of sociologists was of little use to jurisprudence.

Pound's organizational participation in sociology was rekindled after a Department of Sociology was instituted at Harvard University in 1931. In the mid-1930s, he became interested in the sociologies of law authored by N.S. Timasheff and Georges Gurvitch. In 1941-42, as Harvard's first University Professor, Pound offered a graduate research course (Soc 20t) in sociology of law in the Department of Sociology at Harvard. The following year, he offered an undergraduate/graduate course, An Introduction to

the Sociology of Law (Soc 2). He taught these courses until 1947. Pound, a seventy-year-old academic, was drawn structurally into the life of the Department of Sociology and served on doctoral examining committees with Pitirim Sorokin and Talcott Parsons.

Roscoe Pound was an active and accomplished sociological researcher. He advocated the use of multiple methodologies to examine criminal justice systems from head to foot. Pound's 1921 direction (with Felix Frankfurter) of the Survey of Criminal Justice in Cleveland is documented in Chapter Six, as are Pound's role in the Harvard Crime Survey and his phenomenal organization and direction, at age seventy-seven, of the Survey of Criminal Justice in Eastern China in 1947-1948.

Pound's interdisciplinary, sociological accomplishments are outstanding, but it must be remembered that he operated at Harvard from a position of considerable instrumentality and prestige. This aspect of Pound's academic life is highlighted in Chapter Seven, an experiment in parallel biography which chronicles the differential experiences of three sociological participants in the 1929-1931 National Commission on Law Observance and Enforcement: Roscoe Pound, Edith Abbott, and Hattie Plum Williams. All three were highly qualified, well-trained Nebraskans. All worked hard on various aspects of the NCLOE's many projects, but Hattie

Plum Williams, a University of Nebraska sociologist, labored virtually alone and without recognition whereas Abbott, then a Dean at the University of Chicago, and Pound, a Dean at Harvard and a Commissioner at the top rung of the NCLOE, enjoyed relatively greater recognition for their work. Nonetheless, all three were written out of the sociological record by sociologists at the University of Chicago, with the work of Clifford Shaw and Henry McKay "surviving" as the only part of the massive NCLOE study to be institutionally remembered in sociology.

Pound's sociological conception of law and his "theory of interests" are outlined in Chapter Eight, and subjected to an axiological critique in Chapter Nine. Pound argued that law, as a social institution, could not bear the full load of social control that was increasingly placed upon it in the modern world. Thus, Pound offers an institutional analysis of the failure of the criminal justice system to single-handedly solve "the crime problem." The administration of justice can be improved, in Pound's view, through the use of sociological research data. Yet the law contains inherited, internal contradictions that no amount of data or analysis can resolve. The law is a major but fundamentally imperfect mechanism for social control, and must be supplemented by the strong support of corollary institutions, including family, education, fraternal



organizations, and religion. Pound's analysis of modern social change posits that the judiciary is now best seen as a mechanism for adjusting the claims of various interests (individual, public, and social).

The adjustment of interests, in Pound's scheme, cannot always be mechanically determined from legal precedents using the canons of judicial argument and logic alone, but requires judges (even "strict conservatives") to make rulings in some cases that have the effect of establishing (that is, legislating) new rules or precedents. Having demonstrated this reality, Pound urged the judiciary to make use of scientific, sociological data as input when making decisions where judicial latitude was evident and appropriate.

The "flaw" in Pound's prescription was that sociological data, just like unthinking reliance on legal precedents, could not always provide a definitive guide. In such circumstances, where does the bench turn for guidance? Pound asserted simply that the judiciary, on the whole, was a fraternity united in striving to uphold the best interests of society, and thus Pound was unconcerned with this criticism of his analysis. In Chapter Nine, the lived reality of Pound's views on race, culture, and women are examined for the purpose of revealing his axiological assumptions about the "interests of society." Pound's

theory of interests mirrored his own location in a world of white, upper-middle class, professional men. He was in many ways a progressive, but his personal understanding of patriarchal domination, racial and cultural imperialism, and class interest was unreflexive for all his erudition. When the scope of Pound's analysis is enlarged to recognize the greater complexity and class texture of competing social interests in the modern world, Pound's perspective on the institution of law remains insightful, surprisingly modern, and supportive of a cooperative democracy of responsible citizens.

Roscoe Pound's archival trail took me to distant libraries and unfamiliar disciplines, and inaugurated my growing appreciation for the sociology of law as a significant and venerable but little-recognized "specialty" in American sociology. Throughout my hunt for the story of Pound's sociological career, I became increasingly intrigued with the question, "How can such an accomplished and well-connected sociologist be written out of the standard disciplinary histories?" In Chapter Ten, I summarize my tentative hypotheses on this matter, and suggest pragmatic steps for researchers who may be asking, "Was 'X' a sociologist?" The question now is not whether Roscoe Pound was a sociologist, but rather, "How many more people like Pound have been forgotten by sociology?"

### Notes for Chapter One

1. The quotation is from Gurvitch's (1942: 158) Sociology of Law.

2. Taken together, a total of sixty-five introductory textbooks, obtained from the Department of Sociology and Love Library at the University of Nebraska-Lincoln, were surveyed. A representative sample of current and discarded texts were examined, and most (if not all) of the well-known, "standard" texts were included. MacIver and Page (1949) made bibliographic references to Pound's work. Horton and Hunt (1964: 311) briefly observed, "Most sociologists seem to agree with Roscoe Pound's definition of law as 'social control through the systematic application of the force of politically organized society.'" Chester Hunt earned his doctorate in sociology at the University of Nebraska.

## CHAPTER TWO

### SOCIOLOGY, HISTORY, BIOGRAPHY, AND ARCHIVAL FRAME ANALYSIS: A METHODOLOGICAL EXPLORATION

What if "truth" were a shell game?

--Catherine R. Stimpson<sup>1</sup>

#### Introduction

Writing an account of Roscoe Pound's career and status as a sociologist that simultaneously evaluates his intellectual and organizational contributions to sociology is a multidimensional study in biography, theory, and history of sociology. This project requires critique of Pound's empirical and theoretical work in sociology as well as archival research to trace and document the origin, context, and extent of his activities as a sociologist. These tasks are reciprocal in practice: review of Pound's publications suggests archival leads whereas material discovered in archival collections enriches the critique and

sociological understanding of his published work. The sociological literature contains little systematic methodological guidance for such a project, hence the exploration in this chapter.

Active engagement in the historical-interpretive research process sketched above prompted me to outline a theoretically-framed methodological account of archives and the archival research process. This process, extending a concept from Erving Goffman, is here conceptualized as "archival frame analysis" and is developed in Section V of this chapter. First, however, the intellectual location of this study as a whole is mapped in relation to history, historical sociology, history of sociology, biography, and historiography. Section I explores the distinctions and shared interests among "history," "historical sociology" and "history of sociology." Section II examines the contributions "historiography" makes to the multi-faceted project at hand. Section III accepts "sociobiography" as a useful, emergent conceptual framework for this and similar studies in history of sociology. Section IV identifies and evaluates four approaches to biographical/autobiographical explication in history of sociology generally and then makes particular reference to documenting and reconstructing Roscoe Pound's activities in and contributions to sociology.

PART I:  
HISTORY, HISTORICAL SOCIOLOGY, AND HISTORY OF SOCIOLOGY

Roscoe Pound came out of the nineteenth century, completed his significant sociological work during the first half of the twentieth century, and died in 1964. Thus, modern investigation and analysis of his sociological career necessarily adopts an "historical" perspective. This project is fundamentally a study in "history of sociology." As such, however, it is neither identical to nor subsumed by either "history" or "historical sociology." Delineating the boundaries and points of intersection between these perspectives helps articulate the intellectual location of this study within the larger project of sociology. First, note that "historical" studies per se are by no means novel in sociology.

Historical Perspective in Sociology

Calls for serious and regular attention to the historical dimension in all sociological research (not just history of sociology) are found throughout the discipline from its early years to the present. The progressive American historian, Charles Beard (1946: 7), outlined the fundamental relevance of history:

It is true that workers and writers in these sciences -- economics, politics, sociology, anthropology, psychology, ethics, esthetics, etc. -- may show little interest in history as such, may indeed claim to discard written-history as irrelevant or useless. Yet all the data of all these humanistic sciences are selected from the data of human experience in time and space, the actuality called history; and the humanistic sciences certainly consist of abstractions drawn from knowledge of phases of human life as lived in history -- particular phases such as economic, political, esthetic, or ethical interests and activities -- and in turn these sciences become aspects of history-as-actuality.

In Beard's view, the sociologist cannot escape history. Even causal model builders admit the temporal dimension as one of three necessary requirements for causality.

The integral link between history and sociology was early worked out in American sociology at the turn-of-the-century by Nebraska's own George Elliott Howard. Trained thoroughly as an historian, Howard eventually came to chair the Department of Political Science and Sociology at the University of Nebraska and was elected president of the American Sociological Society in 1917. Reflecting on his transformation into a sociologist, Howard (Forthcoming) wrote in 1927:

If, then, I am asked how I gradually worked over in interest from history to sociology and how the former discipline affected my outlook and methodology in the latter, I answer that two conditions, one general and the other especial, rendered the process swift rather than general.

The first condition is the fact that history is a social science; and in my judgment a thorough knowledge of it is absolutely necessary for sound thought in its sister social science. With the possession of such knowledge much shallow and harmful writing might be avoided. For the specialist in any field a broad acquaintance with kindred disciplines is a safeguard.

For the wise specialist perceives that breadth is needful for the sake of depth.

The second condition which made the change to sociology easy was my own conception of the science of history. I avoided a definition which sometimes makes history teaching sterile. To me the function of the historian is not merely to establish isolated events; but to discover the causes and consequences of social decision, of social action. For me the chief function of the history teacher is to trace the evolution of institutions.

Howard's "institutional" approach is seen most fully in his studies of land systems (Howard 1899) and marriage (Howard 1904; for discussion, see Ball Forthcoming a). Ernest W. Burgess' (1945: 23) assertion that Howard "thinks of sociology as limited to the use of the historical method" seriously misinterpreted Howard's expansive, interdisciplinary thrust. If disdained by those like Burgess who would turn sociology into a "natural" rather than a "social" science, Howard's historical perspective was nonetheless echoed by at least one of his successors at Nebraska.

Joyce O. Hertzler, a Nebraska colleague of Howard and a Wisconsin student of E.A. Ross, became Chair of the



Department of Sociology at the University of Nebraska in the late 1920s and continued Howard's appreciation for history, noting that history might now be useful to sociology in unforeseen ways. He was struck by the force of the "new history," of which Charles Beard was then a major proponent. Hertzler (1925: 173) summarized his own view in The American Journal of Sociology:

There have been three decided trends in sociological investigation in recent years, the statistical, social psychological, and historical. This essay is concerned with the latter. The history that sociology utilizes is the "new history." Among the uses which sociology has made of history are the following: the ability to interpret the present, the substantiation of social evolution, the proof of the reality of social change, the perception of cause and effect in social phenomena, its substitution for impossible experimentation, the recognition of the fact that all social effort must take recent trends into consideration, the use of trends and tendencies to anticipate future effects, the conclusion that progress must come by telic activity, as a guide in the determination of the antecedents and consequences of social revolutions, and the provision of knowledge useful in curing or preventing them, the presentation of social psychological data, and facts concerning the development, role, and decadence of institutions, the introduction of purpose and organization into social thought, the demonstration of how ruling ideas develop, the significance of imaginary characters and events, a basis for intellectual freedom, the establishment of a foundation for sociological thought, a demonstration of the mechanics of the realization of ideals, and the part of ideals in modifying human conduct. The facts provided by the new history are continually increasing both

in number and accuracy and will be used more and more by sociology as time goes on, in spite of the development of other fact-finding agencies.

Hertzler appreciated the broad import of historical perspective, and his inclusion of "the establishment of a foundation for sociological thought," "demonstration of how ruling ideas develop," and "the development, role, and decadence of institutions" as historical tasks within sociology are particularly relevant to the study at hand. While Hertzler also included "the presentation of social psychological data" as another historical emphasis, it is important that he did not by any means see this as the sole or even a central point of contact between sociology and history (Hertzler 1925, 1934).

Unfortunately, Howard's early explanatory conception of history and Hertzler's wide spectral view were not shared by boundary-defining American sociologists outside of Nebraska. Isabella McLaughlin (1926: 382) wrote in the American Journal of Sociology:

It is sufficient here to point out that sociology is in method and purpose a natural science, since it studies the typical and demonstrable with the intention of formulating hypotheses and eventually laws of behavior. History cannot be so defined.

McLaughlin's (1926: 382) definition of history as nothing more than a simple penchant for "exactness and precision of procedure, not experimentation and formulation of hypothesis to guide experimentation," misread history and wrapped sociology in scientism. She asserted an unfortunately narrow view of historical research that remains today in the view popular among many sociologists that history is merely descriptive whereas sociology is genuinely oriented toward explanation.

George Elliott Howard (Forthcoming) bridged this false dichotomy by focusing on the study of institutional patterns. And, it should be noted that sociologists who are particularly sensitive to the historical dimension of social patterns tend to focus on the study of institutions (e.g., Max Weber, C. Wright Mills, Anthony Giddens, etc.). McLaughlin (1926: 381), on the other hand, promoted a sociology founded on the study of psychological rather than structural, institutional processes. Note too that Thomas Eliot's (1922) American Journal of Sociology essay on "The Use of History" also adopted a social psychological model, and also saw history as distinctively differentiated from sociology.

The disdain of history by sociologists ruled the day, and as late as Sylvia Thrupp's (1957) analysis of "What History and Sociology Can Learn from Each Other" the idea of

meaningful, thorough interdisciplinary exchange between history and sociology was treated with kid gloves. Works in the tradition of C. Wright Mills and Anthony Giddens have given form to Thrupp's cautious optimism, and new meaning to George Howard's long-neglected appreciation for historically-framed research on the shape and evolution of institutional patterns.

American sociologist C. Wright Mills (1959: 147) is especially well-known for insisting on the importance of historical perspective. He argued:

If we limit ourselves to one national unit of one contemporary (usually Western) society, we cannot possibly hope to catch many really fundamental differences among human types and social institutions.

He observed that in what he called "one-time-and-one-locale studies," there may be so little significant variation of "belief, values, [and] institutional form" that we never understand the variety that is possible in people and their institutions. Along similar lines, Paul Rock (1976: 368) asserted:

Sociology cannot revolve around the assumption that the "present" contains sufficient matter for a reasonable understanding of social life.

More recently, among internationally-recognized theorists, Anthony Giddens (1987b) draws on Mills' inspiration to argue strongly for special focus on the historical aspects of social problems and institutional patterns. Other researchers, espousing a variety of sociological agendas, have raised their voices (and taken to pens, typewriters, and word processors) to underscore the important role of historical perspective in sociology and sociological research (specifically, Cahnman and Boskoff, 1964; Lipset and Hofstadter, 1968; Zaret 1978; Abrams 1982; Skocpol, 1984a, 1984b; and Deegan 1988c, 1988d).

Many celebrated sociologists embraced the great sweep of institutionalized social patterns through time. Harriet Martineau, the first woman sociologist, traced the evolution of western religion (1848) and the history of England (1864). Karl Marx (1906), the father of historical materialism, analyzed the transformation of social systems from feudal economies to industrial capitalism. W.E.B. DuBois (1899) prefaced his landmark study of urban Blacks in Philadelphia with detailed historical accounts of slavery, migration, and related social patterns. George E. Howard (1904) of Nebraska filled three volumes with details of the variety and evolution of marriage patterns. Max Weber's historical studies of law (1968a, 1985b), urbanism (1958), and the relationships between economic and religious

institutions (1985a) are revered models of sociological scholarship (and, suggests Kurt Wolff (1985), a committed critique of society). Jane Addams (1916) chronicled "the long road of woman's memory" from ancient Egyptian dynasties to the twentieth century. George Herbert Mead (1936) articulated "the movement of thought" in the nineteenth century. Of particular interest, note that Roscoe Pound regularly invoked historical perspective in his analyses of legal institutions, often reaching back to the Middle Ages and beyond (see Chapter 8).

Emphasis on historical perspective continues in recent sociological scholarship. For example, Seymour Martin Lipset (1963) pursued an historical analysis of the United States as a nation, and together with Richard Hofstadter (Hofstadter and Lipset 1968) edited an interdisciplinary analysis of Frederick Jackson Turner and the sociology of the American frontier. Mark Poster (1978) combines critical theory with historical analysis to generate a critical history of variations in family forms. Michel Foucault's (1979) work, in which he charts the evolution of "the prison" and its manifestations in modern society, has become central to theoretical analysis in criminology. Theta Skocpol's (1979) study of political revolutions in France, Russia, and China is an oft cited exemplar of comparative historical scholarship. Anthony Giddens (1985), adopting

the nation-state as his unit of analysis, demonstrates a firm grasp of institutional patterns characterizing the last two centuries of the industrialized world.

Exhibiting interest in more recent but nonetheless historical events, Alden Morris (1984) analyzes the origins of the civil rights movement in the United States. Similarly, Jill Quadagno (1988) traces the transformation of old age security programs in the United States during the twentieth century. In addition, there is substantial interest in historical demography, especially in England (e.g., Wrigley 1966; Hollingsworth 1969; Willigan and Lynch 1982). Other researchers have undertaken comparative, quantitative analyses of temporally-organized, government-collected data on populations and economic activity in a variety of nations (Flora 1975). The record of historical perspective in sociology is long, venerable, and very much alive.

### Historical Sociology

Mills argued for the validity and necessity of historical perspective in all sociology, but modern sociologists who follow his advice typically identify themselves as a subset, and label themselves "historical sociologists." Organizationally, historical sociologists recently formed their own section in the American

Sociological Association and now publish a newsletter. Despite this organizational "newness" in the United States, there is a clear intellectual tradition of historical research in sociology. Theta Skocpol, representing macrosociological historical research, (1984b: 356) characterizes the founding research agendas in historical sociology:

Master agendas for historical sociology were first set back when Tocqueville, Marx, Durkheim, and Weber asked important questions and offered such fruitful, if varying, answers about the social origins and effects of the European industrial and democratic revolutions.

Given these precedents, Skocpol (1984b: 359) is wary of defining historical work as a "specialty" in sociology:

Within sociology itself, historical sociology is not -- and in my view, should not become -- a subfield or self-contained specialty.

Although she is an active member of the ASA Historical Sociology Section, Skocpol argues that historical work should be manifest everywhere in sociological investigation. Pragmatically, however, "historical sociology" has become an identifiable research cluster within sociology as a whole. The label "historical sociologist" typically identifies researchers, both quantitative and qualitative, who make conscious efforts to emphasize historical perspective in



their investigations. Skocpol (1984a) provides an annotated bibliography of exemplars in this long sociological tradition.

### The Intersection of History and Sociology

There are differences of emphasis between the practice of history and sociology, but these disciplines also overlap (a point further discussed in Barnes 1948a; Cahnman and Boskoff 1964; Lipset and Hofstadter 1968; Zaret 1978; Abrams 1982; and Skocpol 1984a). Purging history from sociology for the sake of definitional purity would greatly impoverish sociology and deny much of its prodigious disciplinary record. Pursuing over-generalized points of distinction can result in abstracted "definitions of the field" that prove to be unworkable guides in the day-to-day world of social scientific research.

In Tom Bottomore's (1962: 67) instructive view, the potential points of contact between history and sociology are not reducible to simple aphorisms:

At the outset it should be made clear that there are many different kinds of historiography and many different kinds of sociology, so that the relationships between the two disciplines are complex and diverse.

Points of overlap, he continued, between sociology and history are real and productive:

The more the distinction is refined to take account of the actual work of historians and sociologists, the clearer it becomes that historiography and sociology cannot be radically separated. They deal with the same subject matter, men living in societies, sometimes from different points of view, sometimes from the same point of view. It is of greatest importance for the development of the social sciences that the two subjects should be closely related, and that each should borrow extensively from the other. (Bottomore 1962: 68-69).

Based on Bottomore's practical respect for neighboring social sciences, I adopt the view that points of disciplinary intersection should be welcomed whenever possible, likewise for overlap between more narrowly-defined "specialties" within disciplines. Yet, with the exception of historiographers (discussed below), historians are noticeably quiet about the nuts and bolts processes of "doing" history (an interesting exception, though still lacking specificity, is Stanford 1986). Images of "the historian as detective" (Winks 1969) are provocative and not unfaithful, as far as they go, but the multidimensional process of "doing" history of sociology is considerably more complex and philosophically sophisticated than the earthy idea of Sherlock Holmes loosed upon the archives of social

science (for a whimsical and fictional experiment in sociological Sherlockiana, see Hill 1988e).

### Historical Sociology and History of Sociology

"Historical sociology" and "history of sociology" share the historical viewpoint, but history of sociology typically explores the more narrowly-defined topic of disciplinary history and shares deep ties to the "sociology of sociology," the "sociology of knowledge," and "sociological theory." Practitioners in both fields exhibit at least a degree of organizational and professional territoriality (for example, history of sociology has its own specialized journals, including: The Journal of the History of Sociology, and The Journal of the History of the Behavioral Sciences). Nonetheless, the work of historical sociology can potentially inform studies in history of sociology, and vice versa.

Historical Sociologists typically concentrate on the temporal fortunes of macro social patterns, but they may elect to explicate the ecological detail of macro patterns by close study of small, representative organizations or communities. Qualitative researchers, in particular, may arrive at macro conclusions by analyzing the biographies and life experiences of a relatively small group of informants. Thomas and Znaniecki's (1918-1920) The Polish Peasant in

America is a classic example. During the 1988 ASA didactic seminar on historical methods, Larry Griffin, an exponent of quantitative time-series analysis, observed that his work relies entirely on qualitative sociologists to supply the explanatory framework.<sup>2</sup> A macro-oriented analysis of intellectual currents and cultural innovation might profitably choose the discipline of sociology for a case study.

Conversely, historians of sociology typically concentrate on the architects, heroes, heroines, and villains of particular episodes in the development of sociology as an intellectual tradition. Frequent topics include: the history of the discipline as a whole (e.g. House 1936); nationally (e.g. Weinberg 1974; Johnston 1987); intellectual activities in various departments of sociology (e.g., Hertzler 1979; Bulmer 1984; Deegan 1983, 1988a; Johnston 1986; and Howard Forthcoming); origins of concepts and major theories (e.g., Meszaros 1970; Weinberg, Hinkle, and Hinkle 1969); the mentoring and careers of prominent theorists (e.g., Horowitz 1983; Deegan 1988c, 1988e; Hill 1989a); and the specifics of academic quarrels (e.g., Martindale 1976). Analyses of these themes, however, are enriched by embracing broad currents in intellectual history and questioning the place and role of institutionalized sociology within larger social structures if not society as

a whole (e.g., Lepenies 1988). The distinction between history of sociology and historical sociology is more a matter of degree than of kind. Further, historical sociology and history of sociology share common methodological interest in the discovery, preservation, accessibility, and utilization of historically significant data.

Methodology has not, however, been well articulated in the field of history of sociology. Historical sociologists, on the other hand, have made greater effort to explore methodological issues. Max Weber (1968b) wrote on the methods of historical and interpretive sociology (Schluchter 1981). Seymour Martin Lipset and Richard Hofstadter (1968) coedited an interdisciplinary volume on Sociology and History: Methods. Mariampolski and Hughes (1978) wrote on personal documents in historical sociology; and Theta Skocpol (1984a) edited a collection of studies on Visions and Method in Historical Sociology. Most recently, the Program Committee of the American Sociological Association (ASA) organized a specialized didactic seminar on "Historical Methods" conducted by Larry Griffin and Jill Quadagno at the 1988 ASA annual meeting.<sup>3</sup> The macro-oriented emphasis of historical sociology provides little methodological guidance for research in history of sociology, however. Despite the common ground that history

of sociology clearly shares with historical sociology, the methodological difficulties of the history of sociology must be addressed in their own right, not for the purpose of marking boundaries, but because practical guidance is a genuine need. For this reason, the fields of historiography and biography are briefly surveyed for insights of potential import to history of sociology.

## PART II:

### LESSONS FROM HISTORIOGRAPHY

History of sociology is profitably informed by modern theoretical work in historiography (Zaret 1978). The vast literature of historiography is outlined in Kinnell (1987). Importantly (to the study at hand), historiography fills an equivalent but temporally-framed role in history as does sociology of knowledge in sociology. Contemporary historiography draws attention to specific research and authorship processes that Berger and Luckmann (1966) conceptualized more generally as "the social construction of reality." Historiographers raise three issues of major relevance to the "doing" of history of sociology.

### Present, Future, and Past

First, historiographers posit demonstrable links between the writing of history (i.e., the generation and propagation of collective memory) and the contours of human life "in the continuum of past, present, and future" (Breisach 1983: 3). Historians actively enter a feedback loop in the social system. Writing history changes collective historical memory in the present, altering the premises on which present actions are understood and future acts are posited.

### The Vulnerability of Historical Knowledge

Second, Momigliano (1977: 366) observed that one of the characteristics of modern historical work is:

Awareness that the information we have about the human past raises problems which affect the credibility of the information itself and therefore the substance of the past.

That is to say, the reality of new and continuing informational discoveries challenges our understanding -- and hence our trust -- of the past. This always present vulnerability in our knowledge has not escaped notice in sociology and is a major theme in Erving Goffman's (1974) theory of "frame analysis." Goffman demonstrates that "trust" in past understandings does not bear indefinite,

repeated violation. This insight applies particularly well to the process of historical research.

Whereas "new discoveries" in the physical sciences are greeted generally as future-oriented "advances" associated with "progress" (albeit with occasional grumbling about the seemingly wasteful effect of hyper-accelerated technological obsolescence), equally revolutionary discoveries about past social relationships sometimes result in feelings of "betrayal" and retroactive charges of "deceit" and "cover-up!" When trusted historical events are discredited or reconstructed in ways challenging to vested interests or centrally important beliefs, present and future social arrangements can be dramatically effected. This is the feed-back loop already noted. The further point is that persistent, discrediting feedback can lead to more generalized mistrust, extending to the perceived reliability of the process of historical discovery per se. As Georg Iggers (1975: 3) put it, "doubts have increasingly been expressed not only regarding the utility of history to life but regarding the possibility of a science of history." Successive images of discredited historical "myths" make plausible a general conception of all history as myth, thus potentially relegating the methods of historians to shamanism rather than science.



It is not reasonably the case, however, that "one myth will do as well as another," for the best available data often support reasonably clear, factual accounts of past events. Paul Ricoeur (1984: 1-2) observes:

Regardless of the selective nature of collecting, preserving, and consulting documents, and of their relations to the questions put to them by the historian, even including the ideological implications of all these manoeuvres -- the recourse to documents marks a dividing line between history and fiction. Unlike the novel, the constructions of the historian are intended to be reconstructions of the past. Through documents and by means of documentary proof, the historian is constrained by what once was.

Historical researchers can and do reach consensus about the facticity of key events (although disputes about the meaning of the facts established may rage furiously). Social validation processes (which may be conceptualized as games played according to consensual rules) characterize the acceptance of empirical discoveries in all sciences (Leinfellner 1975).

Nonetheless, compared to physical scientists, historians of social events run considerably greater risk of wholesale, societal rejection of their work. Seen generally, this proposition is alarming because it implies a deeply rooted, dysfunctional cultural inability to attend responsibly to new discoveries about past events.<sup>4</sup> Within

sociology, it is not unusual to hear professors and students that observe that "history doesn't matter." Jones and Kronus (1976: 9) document, for example, that approval for work on the history of sociological theory is negatively correlated with sociologists who practice demography, social psychology, mathematical sociology, and methodology and statistics. This disdain for history is hypothesized here as symptomatic of the paradox that the institutionalized process of historical research carries with it the real potential to be socially discredited along with its discrediting discoveries. The resolution of this dilemma has not yet been found in historiography, but the issue has been identified and deserves further analysis by sociologists.

Structural rather than cultural explanation of the rejection of discrediting data is also plausible, and can be given sharp relief by turning directly to investigations in history of sociology. It is true that revisionist history can be disorienting, for males to learn, for example, that the first systematic methodologist in sociology was a woman (Hill 1989a), or that the statistical and mapping traditions so honored by descendants of the Chicago School were initially given form and substance by women sociologists whom the Chicago School long ago dismissed as "mere" social reformers (Deegan 1988c). Revision of the sociological

record often demands re-examination of events, values, and vested interests integral to professional socialization and professional identity. Cognitively, it may be easier to dismiss "dissonant" new information, as psychologists suggest (e.g., Festinger 1962). But, sociologists recognize that documenting discriminatory practices, intellectual exploitation, or corrupt scholarship, for example, may be met with resistance not for reasons of cognitive dissonance, but because the advantages enjoyed by a structurally powerful group are threatened by the data.

This situation has methodological implications for historians of sociology. I have observed over several years of academic experience in a variety of disciplines and institutions that the epistemological foundations of data that threaten vested, status quo, typically patriarchal interests in academic disciplines and departments are challenged with a degree of superlative rigor never applied by established beneficiaries of academic privilege to their own research. Conversely, data and interpretations that would never pass muster in an undergraduate methods course are routinely accepted (and often touted) without a hint of clearly applicable criticism if the data vindicate or reflect favorably on established interests. If it can be shown that the data were collected with care, so much the better. Critique, if any, is left to dissenters who are

labeled "deviant," a process documented in private business and government as well as academia (Weinstein 1979; Piliawsky 1982; Theodore 1986).

It is too facile, as is common, to discount protective reactions by vested interests in terms of "human nature" when the structural results of such responses to critique are so patterned, discriminatory, and consequential (Hill 1983). Similarly, Nina Bayam (1987: 54) comments on the widespread use of "fantastic" Freudian theories to legitimate and rationalize second-class status for women:

Of course this is all a fantasy; yet claiming that fantasy overrode the real world, Freud advanced this fantastic difference as the legitimizing basis of every sexist stereotype and proscription. This fantasy, or so it seems to me, is too patently useful, too crassly interested and too culturally sophisticated, to qualify as an emanation from the Unconscious.

(For a sociological analysis of Freudian theory in modern culture, see Deegan 1986). "Psychological" explanation has become instrumental in hegemonic domination. Rather than innate "human nature," institutionalized "social nature" is everywhere at work.

Professionally, the historian of sociology must understand the political potential that underlies her objective search for data about the discipline she studies. Historical researchers can never know beforehand whether

"dangerous," "embarrassing," or "discrediting" data will be discovered in the course of their investigations. Pragmatically, one could choose to ignore such data if publication would seriously threaten one's professional security or advancement in sociology. But there is a very different methodological assumption that can be asserted: Methodologically, history of sociology requires commitment to intellectual and scholarly values over and above any commitment to the present disciplinary structure and professional organization of sociology. The historian of sociology who adopts this premise, however, is well advised to cultivate wider professional reference groups beyond her discipline per se, and be prepared for rejection by the very discipline in which she was professionally socialized and in which she may have considerable psychological and career investment.

### History and Bias

Third, historiographic research demonstrates that the perspective of the researcher influences what historical data are found and how they are interpreted. McCullagh (1984: 233) states it this way:

Interpreters choose an interpretation of a subject from among several which could be given. The choice is seldom arbitrary. It is usually a choice which the interpreter prefers, for

personal or academic reasons. The worry is that historians may choose interpretations of past events because they prefer them for personal reasons, even when they are not really as well supported as alternative accounts of the subject which could be given.

These tendencies are not unrelated to the points discussed above. If one makes a pragmatic decision to disregard "controversial" issues or data, at least one does so consciously. It follows from McCullagh's point, however, that the same result (i.e., avoiding "problematic" topics or information) can occur without conscious reflection. Indeed, one could inadvertently or consciously "read the record" purposefully in a manner designed to fortify vested interests and further one's career. Conscious distortion or suppression of research findings is a matter of methodological ethics that each researcher must face, and a helpful review of the major issues is found in Sissela Bok's (1978) perceptive analysis of the social effects of deceptions and lies fabricated by professionals (see also, Nebraska Sociological Feminist Collective 1988). There are no easy methodological solutions to the problem of unconscious distortion, but McCullagh suggests two useful rules of thumb for combatting bias, and these are outlined below with specific reference to the present study of Roscoe Pound.

The historiographic concerns outlined above alert researchers in history of sociology to: (1) the potential for historical research to enter with considerable consequence into feedback loops in the social system; (2) the continuing vulnerability of historical knowledge through discreditation by future research; and (3) the ethical question of conscious distortion and the reality of inescapable bias.

#### Historiographic Issues in Studying Roscoe Pound

Specifically historiographic concerns are manifest in the present study in three ways. First, my formal interpretation of Pound's sociological contribution becomes part of the collective historical memory and extends not only into the past but also into the present and the future. That is to say, writing about Pound's past sociological work has potential consequences for the present and future shape not only of sociology, but also society generally. The degree or nature of consequence, is -- by the nature of its human agency -- impossible to predict (Giddens 1987b). It may be negligible or significant.

Confronting this dynamic potential is not simple, as Breisach (1983: 4) makes clear:

Once the link between history writing and the human condition is grasped in all its complexity, simple solutions vanish.

Here is a concrete instance of the instrumental side of the reflexive hermeneutic (Hill 1988c), our double involvement (Giddens 1987b) in social institutions (i.e., our ability to purposefully as well as inadvertantly affect consequential and unpredictable changes in the content and structure of events). Theoretically-informed sociological analysis is a "realizing" activity (Leinfellner 1973) that has feedback effects not only for "knowledge producing systems" such as sociology, but also for the wider culture (Radnitzky 1973). Thus, one consciously undertakes a realizing activity with some trepidation. Mapping Pound's "forgotten" sociological activities and ideas adds to the pool of alternative precedents from which future sociologies can be built. Suggested clues for carrying such work beyond the case of Roscoe Pound per se are outlined briefly in (Chapter 10).

Second, additional archival data not previously available to sociologists or to the earlier biographers of Roscoe Pound are utilized in this study. Hence, several previously held notions (or, more accurately, lack of any explicit notions) about the nature of Pound's sociological work are challenged. This outcome at first appears to lend credibility to the hypothesis that much in the history of



sociology is socially-constructed myth. It is shocking that a theorist of Pound's stature can be essentially excised from the disciplinary litany of sociology and fall almost totally from the collective organizational memory of modern sociologists at the University of Nebraska (where American sociological jurisprudence was born) and at Harvard University (where Pound taught sociology courses in the sociology of law). I am, however, convinced that historical discovery is more than "simply" myth-making. It must take explicit, sociological account of the profound influence of cultural, hegemonic, and structural forces on the shape of what we take to be historical "knowledge."

Third, my choice of sociology as my point of disciplinary reference influenced my interpretation of data and my search for and selection of data. My sociological orientation is supplemented, however, by my training in geography. I first heard Pound's name when a fellow sociology graduate student read to me a passage from E.A. Ross' (1936) autobiography in which Ross recounted his "Nebraska years." Two days later in the university library, I happened across a copy of the Pound and Clements (1900) monograph on The Phytogeography of Nebraska, left by chance next to a photocopy machine I used. My eyes wandered over the title and I recognized Pound's name. Could it be that the dean of the Harvard Law School also wrote on the plant

geography of Nebraska? I was amazed to learn the affirmative answer, but without my continuing interest in matters geographical I do not think I would have asked the question. My interest in Pound became personal and sharp. His study of geographic distributions, his friendship with E.A. Ross, his links to sociology, his obvious interdisciplinary success, his Nebraska roots, all impressed me. I was favorably disposed to tell Pound's sociological story. Was I too impressed? Few sociologists appeared to think Pound significant; was I likely to make mountains out of mole hills? McCullagh (1984) observes that interpretive dilemmas such as these are quite ordinary and unavoidable. Thus, he argues, "standards of justification" for historical interpretation must be carefully thought through.

McCullagh (1984: 235-236) offers two principles to combat biases that confront all historians. First, while "historical descriptions are always partial in that they never describe every detail of their subjects," it should be remembered that "descriptions of a high level of generality are not very informative." Second, researchers must attempt to compensate for reflexively discovered bias, "for instance by looking for the bad points of those they admire and the good points of those they dislike."

In the present study, most all of Pound's private life and work as a jurist is excised from consideration,

resulting definitely in a "partial" study. Indeed, much of what could be presented about his sociological work is abstracted from a wealth of available documentation. At the risk of inundating the reader, extensive quotations from primary documents are employed in several instances in this study. Like photographs (Hill 1984b), original documents increase the readers' opportunity to make judgments without the intervening interpretations made by a third party. I attempted to draw generalizations only within bounds supported by documented data subject to intersubjective verification.

I made deliberate attempts to focus my attention on the structural, institutional, and organizational aspects of Pound's sociological activities, thus systematically addressing matters of sociological rather than purely personal concern (although it is impossible to separate the two entirely). The primary focus, at least, is sociological. Repeatedly, I asked what structural, organizational, and institutional patterns enfold, empower, and limit Pound's sociological productivity and insight.

In selecting materials for scrutiny, I made an effort to consult and evaluate all archival records I could locate -- within the constraints of time, possible travel, and personal budget -- that were likely to shed light on Pound's links to sociology. I was frankly surprised to find so much

material germane to my project. The archival record is not only large, but rich.

It is my bias -- and my hypothesis -- to posit that Pound, an interdisciplinary scholar from Nebraska, was -- among other things -- an accomplished sociologist. The positive facts of this case are clear and it seems silly to look for negative evidence (i.e., to spend time looking for evidence that Pound was not a member of the American Sociological Society (ASS), for example, when there are clear organizational records and correspondence attesting to his membership, participation in meetings, and service on ASS committees).

My developing admiration for Pound, strong though it is, is not without reservations. The interpretations herein follow McCullagh's second dictum insofar as I made an effort to note the weaker points (Chapter 9) as well as the stronger suites in Pound's biography as a sociologist. Given the discussions above, one can hope that historiographic literature will continue to be a productive source of insight for projects in history of sociology.

### PART III

#### BIOGRAPHY AND SOCIOLOGY

##### Introduction

Biography plays a central role in sociological theory and understanding. C. Wright Mills (1959) drew a useful distinction between individual idiosyncracies as "private troubles," on the one hand, and, on the other, "public issues," which are reflected in individual biographies but are also part of larger, social patterns that merit sociological attention.<sup>3</sup> The biography of pure idiosyncrasy has little to share with sociology. Close inspection shows, however, that numerous actions that first appear idiosyncratic are in fact deeply embedded in institutional structures and are coercively shaped and defined by those institutions.<sup>6</sup> Judith Hammond (1987), for example, demonstrates how women medical students negotiate status in a male-dominated setting by "building" appropriate biographies. More generally, based on the social phenomenology of Alfred Schutz (1970-1971), Peter Berger and Thomas Luckmann (1966) wrote a classic exploration of the dialectical hermeneutic in which individuals both shape and are shaped by social institutions. Biographical understanding is intimately linked to institutional patterns: "Individuals perform discrete institutionalized

actions within the context of their biography" (Berger and Luckmann 1966: 65). Institutional patterns (the core subject matter of sociology) are inextricably rooted in the everyday biographies of individual participants in social activities. As institutions are integral to the understanding of an individual life, individual biographies open institutional patterns for close scrutiny -- and change.

Individual biography cannot be adequately understood outside of a sociological framework. C. Wright Mills (1959: 158) put it:

We have come to see that the biographies of men and women, the kinds of individuals they variously become, cannot be understood without reference to the historical structure in which the milieux of their everyday life are organized.

The relationship between society and biography is dynamic, reflexive, interconnected.

### Biographical Study in Sociology

Biography is a familiar format in sociology. One of the earliest sociologists, Harriet Martineau (1869), wrote biographies, primarily studies of people known to her in a variety of disciplines. More typically, sociologists write intellectual biographies of other sociologists, particularly

theorists (e.g., Abbott 1939, 1950; Balander 1974; Blackwell and Janowitz 1974; Horowitz 1983; Deegan 1981, 1988c, Forthcoming g). Further, biographical "life history" documents (such as letter, diaries, and autobiographies) have been staple data sources for sociology ever since Thomas and Znaniecki (1918-1920) published their landmark study (Gottschalk, Kluckhohn, and Angell 1945; Plummer 1983; and, for a recent worked example, see Reinharz 1987).

An important methodological question is whether individual biography can be meaningfully approached using the conceptual apparatus of sociology. Phillip Abrams (1982: 267) provides a useful answer:

The problem of accounting sociologically for the individual in particular is really only a more precise version of the problem of accounting for individuals in general. The solution in both cases lies in treating the problem historically -- as a problem of understanding process of becoming rather than state of being.

Focus on a specific, individual biography does not a priori restrict the analyst to psychological models of explanation (although this is almost universally assumed in Anglo-American culture -- and by many American sociologists in their everyday lives). Structural explanation of individual experience provides a little-used but powerful alternative to psychologism.<sup>7</sup> Biographical study in

sociology, especially historical biography, is not without methodological challenges (Rock 1976). This is a truism, of course, that holds for all types of sociological investigation.

Biography, history of sociology, and theoretical sociology frequently merge imperceptively. For example, Lynn McDonald's (1976) survey of the sociology of law, ostensibly a "theory" book, is also a chronologically-arranged "who's who" in sociological jurisprudence. The intellectual lives of sociologist scholars thematically unify the content of numerous examples of published research in history of sociology. Intellectual biography is integral to most projects in history of sociology.

### Sociobiography

Judy Long (1987) demonstrates that sociologically-informed biographical writing, or "sociobiography," is an exciting field of new work that is part of "an explosion of interest" in literature, psychology, feminist theory, and sociology. Sociobiography, in Long's view, is especially well-equipped to explicate women's lives more accurately and with greater frequency than do traditional, patriarchal modes of biographical exposition. In my view, however, Long's conclusions apply equally well to both the male and



female subjects of sociobiography. According to Long, the contributions of sociobiography lie in at least three areas:

(1) Re-examination of "the one-man-one-career model" typically employed in "the narrative/theoretical frameworks for telling lives (Long 1987: 21). Wholistic focus on the "lifespan," Long suggests, promises to be more fruitful.

(2) The sociological perspective is a corrective to psychologically-framed biography:

Psychological approaches seriously decontextualize accounts, negating the reality of multiple selves, anchored in ongoing social relations, and multiple biographies, no one of which is "the truth." (Long 1987: 23).

She concludes:

The sociological perspective is the only one that links the contingency of individual behavior (including self-referential writing) to the incentive structures that surround her. (Long 1987: 23).

(3) Long (1987: 25) asserts that "the new sociobiography can make a contribution . . . in the analysis of institutional factors that shape intellectual production." Further, she adds, sociobiography can illuminate "the social production of obscurity."

The sociobiographical strengths enumerated by Long help clarify several sociological aspects of the present study.

First, "career" accounts of Pound's life typically focus on his work within botany or law. Seen from the perspective of a "lifespan," Pound must be recognized as botanist, lawyer, and sociologist, at the least. The present study focuses on Pound's "career" as a sociologist, but does so in the interest of disciplinary self-knowledge, expanding the biographical record, and with considerable appreciation for the links between Pound's multiple endeavors. Second, this study looks consciously for the structural context and organization of Pound's work. Third, this study specifically considers the "institutional factors that shape intellectual production" and ponders the social production of Pound's obscurity in modern sociology. Thus, institutionalized patterns of professional discrimination are of interest to this study.<sup>8</sup> As an ideal toward which to reach, "sociobiography" is adopted here as a useful way to conceptualize biographical accounts in history of sociology.

### Biographical Tangents

Biography is a well-developed and popular genre, as is autobiography. However, much in published biography and autobiography (and the corollary techniques of autobiographical construction and literary analysis) lies beyond the project of intellectual biography generally and sociobiography particularly. Suffice it to say that I have

no professional affinity for the pop, sometimes prurient biographies that so often make their way to the New York Times' "Best Seller" lists.\* In contrast, the standards of scholarship in history of sociology share much in common with the biographical craft exhibited in carefully documented accounts typically produced by academic historians. There are, however, other legitimate currents in biography with which the present project has only tangential connection, at best.

There is, within the discipline of modern language and literatures, a well-developed theoretical analysis of the literary merit, form, and complexity of biography and autobiography (Olney 1972; Gittings 1978; Friedson 1981; Gunn 1982; Buckley 1984; Edel 1984; Nadel 1984; Eakin 1985; Novarr 1986; Homberger and Charmley 1988). These works focus primarily on the literary interpretation of biographical works, however, rather than methodological matters of interest to sociologists, such as data collection problems and strategies for structural analysis.

Judy Long (1987) finds particular merit in the feminist approach to autobiography that arose during the 1980s. I agree completely that "the major texts and theories of sociology . . . have until very recently unapologetically excluded women" (Long 1987: 3; see also Deegan 1988b; Terry 1983). At the same time, I do not concur with Long that

"the understanding of women's experience and behavior requires privileged access to women's consciousness" or that "men's writing about women without access to their experience is no longer credible" (Long 1987: 3) if by "privileged access" Long means biological experience as a female. My own biographically-framed studies of women's sociological work (Hill 1989a; 1989b; Forthcoming c) have met with (at least some) critical acceptance by feminist women theorists without my having any more "privileged" access to women's consciousness than a woman writer might be expected to have, especially where interpretations of materials relevant to history of sociology are at stake (i.e., archival documents and published sociological works). Unless men attempt to write about biologically-based experiences, such as childbirth, the requirement should not be biological identity, but for men to demonstrate (1) solid appreciation of feminist theory; (2) conceptual, factual, and emotional understanding of the structural realities of women's oppression; and (3) openness (in the civilizing sense intended by George Herbert Mead) to actively "take the role of the other" through working collegially, critically, and politically on day-to-day projects with oppressed women sociologists.<sup>10</sup> As a sociologist, I am not convinced by overly wide retreats to biologism. Finally, while recognizing the insightful work of many feminist literary

theorists (e.g., Benstock 1987), it is well to remain wary of writers (e.g., Stanton 1987) who are given more to clever word play than substantive analysis.<sup>11</sup>

Freudian-based psychohistorical work exemplified by Erik Erikson (1962) in his study of Martin Luther leads conceptually away from the sociological goals of the work at hand. Insightful and provocative as psychohistory continues to be (Erikson 1975, 1980; Runyan 1982), it emphasizes the psychoanalytic intersection of the psyche with the historical moment. My concern is social structure, organization, and institutions.

Baron and Pletsch (1985) observe that writing biography can be a path to self-awareness on the part of the biographer. Such outcome, however, is not the raison d'être for this project although it has clarified my understanding of sociology as a discipline and my relationship to it. In this limited respect, I confirm Baron and Pletsch's central point. But, to the extent that this study moves beyond personal reflexive insight to illuminate aspects of the nature of sociology for other readers, then my primary goal has been attained and Baron and Pletsch's thesis, while in part corroborated, is also surpassed.

### Rationales for a Sociological Biography of Roscoe Pound

Theoretical justification for exploring the biography of Pound's sociological career rests primarily on three points. First, I adopt a phenomenological perspective on "biography" (Schutz 1970-1971; Berger and Luckmann 1966) informed by C. Wright Mill's (1959) pragmatic distinction between "private troubles" and "public issues."<sup>12</sup> Pound reflects the public world of early American sociology during its founding and subsequent growth from the personal horizon of an intelligent, articulate, and accomplished plant ecologist, jurist, and sociologist. Pound's biography provides an alternative, genuinely interdisciplinary window on the history and structure of the discipline of sociology.

Second, Pound's intellectual biography is an ideal typical example of the two scientific career scenarios through which Thomas Kuhn (1970) hypothesizes revolutionary ideas are generated in scientific disciplines. The first scenario hinges on intellectual accomplishment at a young age (and this describes Pound's co-founding of American plant ecology at twenty-eight years of age). The second scenario involves cross-disciplinary career change at a later point in life (and this fits Pound's founding of American sociological jurisprudence). Pound's intellectual life history provides a well-documented example from which

to consider a neglected component of Kuhn's theory of revolutionary scientific change.

The logic for such analysis is provided by Max Weber (1968b: 21), who wrote:

The more sharply and precisely the ideal type has been constructed, thus the more abstract and unrealistic in this sense it is, the better it is able to perform the functions in formulating terminology, classifications, and hypotheses. In working out a concrete causal explanation of individual events, the procedure of the historian is essentially the same. Thus in attempting to explain the campaign of 1866, it is indispensable both in the case of Moltke and of Benedek to attempt to construct imaginatively how each, given fully adequate knowledge both of his own situation and of that of his opponent, would have acted. Then it is possible to compare with this the actual course of action and to arrive at a causal explanation of the observed deviations, which will be attributed to such factors as misinformation, strategical errors, logical fallacies, personal temperament, or conditions outside the realm of strategy. Here, too, an ideal-typical construction of rational action is actually employed even though it is not made explicit.

Thus, the foundation of an explanation of significant developments in both plant ecology and law can be drawn by comparing Pound's "fit" with Kuhn's ideal types of revolutionary scientific change.

Third, Pound made substantial empirical and theoretical contributions to sociology, particularly to the sociology of law. Nonetheless, his professional biography has been

largely erased from the surviving sociological record represented in mainstream textbooks and theory surveys. Accounting for Pound's "disappearance" from the chronicles of sociology is an intriguing problem in disciplinary self-knowledge, modern myth-making, and professional socialization. This is precisely the question asked by C. Wright Mills (1948: 664) in his study of Edward Westermarck's work on marriage: "Why did this man have his best time in other times and then drop from the running in the operative, the pivotal, footnotes of fresh writing?"

The importance of disciplinary perspective, and the disciplinary sensitivity it presumes, are revealed by assessing the outcome when non-sociologists write biographies about sociologically significant intellectuals. Examples of competent biographies that miss the sociological mark, despite their considerable interest on other grounds, include Allen Davis (1973) on Jane Addams; Fred Matthews (1977) on Robert Park; Valerie Pichanick (1980) on Harriet Martineau; and Helen Stauffer (1982) on Mari Sandoz.

The case of Roscoe Pound illustrates this point especially well. The two major biographies of Pound (Sayre 1948; Wigdor 1974) were written from the standpoint of a jurist and an historian, respectively. While interesting and useful accounts, each in its own way (Paul Sayre's is the more casual and anecdotal whereas David Wigdor's is by



far the more scholarly and analytical), neither Sayre nor Wigdor gave emphasis to sociology as a discipline. Neither, for example, evaluated the organizational and structural context of Pound's specifically sociological work. Neither examined his role in an impressive network of sociological colleagues (which included, among others, Edward A. Ross, George E. Howard, Albion Small, Edith Abbott, Grace Abbott, Charles Henderson, Georges Gurvitch, Pitirim Sorokin, Nicholas Timasheff, and Talcott Parsons). We learn many things from Sayre and Wigdor, but we learn little about the details of Pound's sociological activities.

My preparation in sociology positions me to make connections and unravel relationships relevant to the discipline of sociology that few historians would think particularly important. By identifying, researching, and evaluating Pound's sociological activities and contributions, the present study makes a contribution that differs considerably from that which lawyers or historians, by dint of their training and their own disciplinary agendas, could be reasonably expected to produce. Needless to say, perhaps, this point may cut both ways: lawyers and historians may not find much herein that serves their own legitimate interests.

### Biography and Disciplinary Discovery

Tracing Pound's sociological biography embarks on a voyage of disciplinary discovery in which I have a vested interest. Specifically, a sociologist's interest. This exploration is undertaken with a particular view to Pound's experience of sociology as a young and growing discipline in the United States, and questions the "social construction" of his obscurity in the received litany of major sociological contributors. I hope, of course, that I launch this journey to the satisfaction and interest of those who read this monograph. Below, I outline the methodological points of departure from which a sociobiographical study within history of sociology can begin.

#### PART IV:

#### SURVEY OF METHODOLOGICAL OPTIONS AND ISSUES IN HISTORY OF SOCIOLOGY

Methodologically, most accounts in history of sociology take the form of (1) autobiography, (2) oral history, and/or (3) theoretical, biographical, and/or historical analyses of published scholarly works. More recently, a few studies have (4) analyzed unpublished materials, including letters and manuscripts, stored primarily in archival depositories. In practice, various combinations of these four

methodological strategies can be used. Each approach to disciplinary history is outlined below, noting strengths and weaknesses in each case and the applicability of the approach to the present study of Roscoe Pound. The archival strategy is fundamental to this project.

### Autobiography

Edward A. Ross' (1936) lively story of his career as an academic sociologist is a good example of the first type of disciplinary history: autobiographical first-hand accounts. Ross' Seventy Years of It exhibits the personal revelations, self-congratulation, and selective memory that make autobiographies simultaneously absorbing and frustrating for historians of sociology to read. The events in which subsequent researchers may be interested are sometimes given only passing mention or fragmentary discussion by autobiographers.

The authority attributed to autobiographies lies in the premise that each autobiographer writes from first-hand experience and therefore knows whereof he/she speaks. Yet, it is well-known that autobiographers write selectively and often skew the truth (Eakin 1985) -- sometimes constructing outright fabrications (see, for example, the discussion in Chapter 6 concerning Raymond Moley's (1980) inflated account of his role in the Cleveland Survey of Criminal Justice).

Posthumously published autobiographies are sometimes subject to "careful editing." Harriet Martineau (1878), the first woman sociologist, left a detailed autobiography, but one recalls in caution that before its publication after Martineau's death the manuscript was edited by a devoted friend. When evaluating autobiography, readers must allow for the tendency of authors (if not their literary executors) to put on a good "face" (i.e., "an image of self delineated in terms of approved social attributes," Goffman 1967: 5). Autobiography could more often adopt a self-consciously reflexive perspective -- as Shulamit Reinharz' (1984) On Becoming a Social Scientist so admirably illustrates.

First-hand accounts also appear in collections of shorter autobiographical statements. In this format, "well-known authorities" are typically invited to write accounts of particular departments or lines of sociological inquiry. The compilations edited by Phillip Hammond (1964) and Irving Louis Horowitz (1969) are good examples.

Autobiographical Department Histories. Departmental histories are written frequently by sociologists who were themselves influential figures in the life of the department about which they write. There are, for example, two accounts of the history of the Department of Sociology at

the University of Nebraska. Joyce Hertzler (1979) wrote a history in 1929 for L.L. Bernard's planned book on History of Sociology in the United States, but the account moldered in a file cabinet until Mary Jo Deegan published it as a special editor in the Journal of the History of Sociology. Hertzler was not party to the earlier years in the department at Nebraska and thus asked E.A. Ross for more detailed information.<sup>13</sup> Ross responded:

One thing I can do at once is to go over that part of your "History of Sociology at Nebraska" which relates to the period I was there 1901-06 and endeavor to make it as accurate and realistic as possible.<sup>14</sup>

Hertzler dispatched the manuscript to Ross.<sup>15</sup> An earlier history of the department at Nebraska was authored in 1927 by George E. Howard (Forthcoming) and remained unpublished for many years.<sup>16</sup> Interestingly, Howard's account does not mention Pound's work, but then Howard did not return to Nebraska until near the end of the Ross-Pound collaboration (see Chapter 4) and he limits his account to department members per se. Hertzler arrived on the scene in Lincoln even later, but includes notice of Pound's work, quite possibly as a result of his having consulted with Ross who pledged to make the account "as accurate and realistic as possible." Despite Ross' declared orientation to "realism,"

the Howard and Hertzler essays, while useful, are nonetheless sanitized recollections intended for public consumption. Perhaps it is a function of the brevity of the accounts. Elaine Showalter (1987: 33) wrote, with reference to disciplinary accounts in English, that:

The abstractions of most official histories of criticism are too coarse to accommodate the false starts, the lucky breaks, the material pressures, the intellectual slog, or, least of all, the human drama that make up a living critical movement.

In any event, the Howard and Hertzler accounts include little hint of the financial stress, disappointments, and organizational politics in the department that are clearly reflected in the archival record.<sup>17</sup>

Disguised Autobiography. Not all essentially autobiographical works are so identified. Autobiography masquerading as disinterested scholarship is a common format in sociology. For example, when Albion Small (1916, 1924) wrote his treatises on the development and origins of American sociology, he wrote from the position of one who had personally held the first chair of the first Department of Sociology (at the University of Chicago), the first editorship of the American Journal of Sociology, and the fourth presidency of the American Sociological Society. He

knew personally the vast majority of actors in what was then a small academic network by today's standards.

From Small's point of view, sociology "originated" in Germany, where Small himself studied (rather than in England where Harriet Martineau, Charles Booth, and Beatrice and Sidney Webb developed an applied model of sociology, or in France where Auguste Comte, Gabriel Tarde, and Emile Durkheim gave sociology a major impetus). Savigny, the Cameralists, and other topics on which Small himself published appear in his account as crucial landmarks in disciplinary evolution. Small's one-sided accounts are useful, however, when it is remembered that they were written from a personally-informed perspective. But, decorated with the objective paraphernalia of footnotes, bibliographic citations, and the distancing ring of academic prose, the autobiographical character of such accounts can elude the reader.

Academic writing, like academic lecturing, is a "form of talk" (Goffman 1981) with politically significant conventions. With reference to "the lecture," a form of academic discourse, Goffman (1981a: 170) wrote:

In all of this we see a glimmering of the links between social affairs and social structures, a glimpse of the politics of ceremony -- and another way in which preeminence derives less

from differential achievement than from the organizational needs of sponsors and their occasions.

Departmental "retrospectives" are generally excellent examples of "the politics of ceremony" and the "organizational needs of sponsors." Purportedly objective historical surveys written by the founders and leaders of the discipline are mines of information and insight, as well as some extraordinary examples of organizational and self-serving constructions of social reality.

Bureaucratic Autobiography. Self-serving, autobiographical documents result in part from the contingencies of professional work in competitive, bureaucratically-ordered educational organizations. "Resumes,"<sup>18</sup> "annual reports,"<sup>19</sup> "program self-evaluations,"<sup>20</sup> "promotion and tenure files,"<sup>21</sup> and "research funding proposals"<sup>22</sup> are types of autobiographically-informed documents intended primarily for administrative consumption in university settings. Program self-evaluation documents are autobiographical statements produced by organizations which have something to gain by putting on a good "face." These reports project "accomplishments," "needed improvements," "strengths," "plans," and other images that are carefully selected, tailored, and created for administrative



audiences. In modified form, the "results" may also be distributed to alumni, funding sources, news media, competitive organizations, prospective students, or the public generally. The plethora of such documents suggests that presenting "face" rather than content is a pervasive theme in the secondary socialization of professional academics. Importantly, from the perspective of disciplinary historians, such documents often find their way to archival files.

Autobiography and Roscoe Pound. For me, autobiography is not a possibility for this study, for obvious reasons. I have no first-hand knowledge of Roscoe Pound or his sociological activities. Alas, I was born too late. There are autobiographical accounts that can be consulted, however. When published, such accounts move formally into the category of "published materials" discussed more fully below.

It is appropriate here, however, to note the nature of the relevant, specifically autobiographical data available.

Pound did not write a full-fledged autobiography. His brief, first-person accounts (1937-1938; 1938) of juristic developments that unfolded during his lifetime include only abbreviated statements about his foundational connections with E.A. Ross and Albion Small. As Dean of the University

of Nebraska College of Law, Pound (1905c, 1907c) wrote brief annual reports, but these reflect no part of the sociological conversion that Pound underwent at the time. Hertzler's (1979) semi-autobiographical account of the Department of Sociology at Nebraska devotes a useful paragraph to Pound's work. Pound is briefly mentioned in autobiographies written by social scientists who knew him (Ross 1936; Johnson 1952; Sorokin 1963; Glueck 1977). Moley's (1980) mention of Pound is grotesque distortion (see Chapter 6). First-person recollections by lawyers (e.g., Kocourek 1947; Sayre 1948; Allen 1965) are typically anecdotal and blank where sociology is concerned. In all, the available, autobiographical data serve, at best, only to whet the historical appetite.

### Oral History

The Johnny/Joanna-come-lately who was not "in at the start" or privy to "inside stories" of bygone days may, in some circumstances, find oral history techniques useful for reconstructing earlier (but not too early) eras of sociological work. With appropriate entre, the oral history approach is an interesting possibility. Entre is essential because elder academics nearing the close of their careers can be extremely reticent about what they will tell about themselves, their departments, and other sociologists.

Dexter (1970) outlined strategies for interviewing "elite" informants, but did not focus on the dynamics of interviewing academics. Although "elites" in various guises are central to an understanding of hierarchical social structures, there is no systematic, theoretically-grounded theory of how to interview them. McPherson (1975) noted additional limitations to the use of oral histories (especially those found in archives). In Pawlowski's (1980) view, such problems are more general.

Tadeusz Pawlowski (1980: 204) observes that although "questions and answers are essential elements in any investigation by means of a questionnaire or an interview," the social sciences lack a "general theory of questions." He continues, "there are only fragments of one, scattered throughout books and papers in the form of analyses of examples of ill-formed questions or mishandled interviews." A theory of questions, in Pawlowski's (1980: 204) view, must take account of:

1. the person who is to answer the question,
2. the person who is to ask the question,
3. the goal of the investigation,
4. the situation in which the investigation is made, which covers psychological, sociological, political, and other factors.

What we find, he asserts, are scattered "practical recommendations" rather than integrated theory.

The political factor is an important aspect of interviews with academics. Mary Jo Deegan, who has interviewed numerous elder sociologists about their work and careers in sociology, reports several instances where her informants "talked" only on the strict condition that the inside stories never be repeated or published. Deegan states that in several cases, the informants (often major scholars who retired after distinguished careers) still feared retribution if they talked (even as anonymous informants) about academic secrets or political battles in their former departments.<sup>23</sup> There is more at stake here than "social desirability" or "presentation of self." These informants are located in a potent, political apparatus. While oral historians await a more comprehensive theory of questions, data from difficult, "strictly confidential" interviews may nonetheless allow researchers to discover and integrate bits of public data that would otherwise remain unconnected.

The oral history interview is a venerable tradition in sociology (Bennett 1981). Generally adequate guides to the collection of oral histories are relatively recent (Bernhardt 1980; Ives 1980; Henige 1982), and the interests of history of sociology are not addressed. Long (1987) notes the increase of oral histories collected by and from women. She urges further use of this technique to document

women's lives. Oral history interviews can result in spontaneity and revelation of data that an informant might not -- on reflection -- include in a formal, written biography. At the same time, the very lack of time to reflect may result in partial accounts or the omission of key data. In general, oral history is not much used to document the history of sociology as a discipline.

Examples of oral history technique in history of sociology include the following: Deegan (1988c) used data from interviews with Irene Mead and Jessie Bernard in her Jane Addams and the Men of the Chicago School, 1892 to 1918. Lengermann (1979) interviewed sociologists who established the American Sociological Review. James Carey systematically interviewed several former members of the Department of Sociology at the University of Chicago. Deegan (1988c) used data from the Carey interviews as did Harvey (1987) who used Carey's transcriptions to write his Myths of the Chicago School of Sociology. A few contributors to Deegan's (Forthcoming g) historical survey of the fifty most significant women in sociology used oral history techniques.

Another example of oral history is Bob Mullan's (1987) published collection of verbatim interviews with Ralf Dahrendorf, Howard S. Becker, Robert Merton, and others. These and similar transcripts may be useful to future

historians of the discipline. Such interviews may be the only first-hand accounts available in some cases. Previously collected interviews, however, are limited to the data another interviewer believed worthwhile to pursue.

Although enriched by the vitality of first-hand involvement, oral histories are subject to bias, interaction effects between interviewer and informant, enhancement of self-presentation (and self-deprecation), storytelling conventions, momentary memory lapse, and hegemonic self-repression.<sup>24</sup> Mental deterioration or inability to recall details is problematic for historically-oriented research as some of the potentially most significant informants may be of very advanced age. Wingrove (1987) opens discussion of problems in interviewing "the old, old," but does not advance far toward useful solutions. Unlike survey interviews, where informants who are unable to respond can be "replaced" with a substitute, the historian of sociology may often depend on a single informant who knows what no one else now living remembers or witnessed. The passage of time eventually works against the oral history approach in history of sociology.

Oral History and Roscoe Pound. Oral history now flounders miserably as a useful strategy for exploring the origins and context of Roscoe Pound's contributions to sociology. The sociological pioneers who knew him as

student and/or colleague died years ago, e.g., Amos Warner in 1900, Charles Henderson in 1915, Albion Small in 1926, George Howard in 1928, E.A. Ross in 1951, Grace Abbott in 1939; Edith Abbott in 1957, Alvin Johnson in 1971, Elenor Glueck in 1972, Sheldon Glueck in 1980. The sociologists with whom Pound worked in the 1940s have also passed, e.g., Georges Gurvitch in 1965, Pitirim Sorokin in 1968, Nicholas Timasheff in 1970, and Talcott Parsons in 1979. Pound's colleagues on the Cleveland Survey of Criminal Justice, including Felix Frankfurter, are dead. As Pound taught primarily in law schools, few sociologists studied under Pound, and I know of none who are still living. There are persons in Cambridge, Massachusetts, who knew Pound, but from the perspective of law rather than sociology.

Pound outlived two wives and fathered no children. His two sisters did not marry or have children. Thus, there are no family relatives to interview. An interview with Pound was conducted by Robert Manley in 1962 concerning Pound's Nebraska years. A tape recording and transcript of the interview are available at the University of Nebraska archives. Unfortunately, this interview holds little data of use to history of sociology. At this point in time, one can only lament that the interviewer did not know or think to ask about E.A. Ross and sociology. The memories of Pound

that now survive are not personal recollections, but institutionalized memories -- with all that that implies.

### Inventories, Surveys, and Analyses of Published Materials

In the absence of first-hand, autobiographical knowledge or oral histories derived from interviews with knowledgeable participants, authors of disciplinary history and the development of sociological ideas typically fashion accounts based on inventory, survey, and analysis of published materials of various sorts, including monographs, bibliographies, autobiographies, organizational histories, doctoral dissertations, organizational reports, professional journals, newspaper articles, published letters, and university catalogs. Such materials are found with relative ease in major research libraries or, if need be, through interlibrary loans.

Discarding the Sociological Corpus. Librarians are not only selective in book acquisitions, they also make selective discards. Once entered into library catalogs, some volumes have a better chance of remaining in the library collection than others. Periodic "weeding" of library collection results in the annual discard of unknown numbers of books nationally. Personal and professional biases enter into deaccession decisions. Depending on the



institution, sociologists may or may not be asked to "double check" decisions made by librarians. Even so, not all sociologists agree on the importance of "early" vs. "out of date" books. Books judged "out-of-date," "of little relevance," or "little used" stand a better chance of discard. As a result, early works associated with perspectives judged "irrelevant," "not scientific," or "not really sociology" may too easily become lost to subsequent students.<sup>25</sup> Other books simply deteriorate from age, abuse, and use.

Bibliographies. Preparatory to analytical surveys, researchers sometimes compile bibliographic inventories of the published output of particular scholars, departments, or schools of thought. The examples are numerous. Rivlin (1947) compiled a comprehensive list of the separately published works of Harriet Martineau. Kurtz (1984) lists hundreds of publications by and about the Chicago School of Sociology. Deegan (1988b) compiled a bibliography of works by early women sociologists at the University of Nebraska, and Hill (Forthcoming b) provides a chronological bibliography of separately published works written by student and faculty sociologists at the University of Nebraska. Topical bibliographies with historical import are numerous. Hill (1984b), for example, identified

foundational literature in the emergent field of visual sociology. Universities, including the University of Chicago (1917) and the University of Nebraska (Gable 1926) once made a practice of publishing purportedly comprehensive lists, departmentally arranged, of publications by faculty members and doctoral students. Social Science Citation<sup>a</sup> Index and Sociological Abstracts, while serving as indices to current literature, are becoming de facto historical bibliographies with disciplinary (even interdisciplinary) reach. Compiling an historically comprehensive bibliography of sociological bibliographies would itself be a major undertaking.

History of Sociology and Published Works. Typical examples of history of sociology based totally or primarily on easily available published materials include: Nelson House's (1936) The Development of Sociology; Luther and Jessie Bernard's (1943) Origins of American Sociology; Herman and Julia Schwendinger's (1974) Sociologists of the Chair; and Roscoe Hinkle's (1980) Founding Theory of American Sociology 1881-1915. These heavily-footnoted tomes become the authoritative repositories of disciplinary self-knowledge and are placed on graduate reading lists and are assigned as texts in what often amount to professional indoctrination courses in graduate schools.

Methodological Issues. Preparing historically-oriented analyses of published materials involves fundamental methodological questions. As data, to what extent does the corpus of published material adequately represent the research activity and theoretical concerns of the discipline as a whole? Further, to what degree do published materials adequately reveal the interpersonal and structural contexts of intellectual production in sociology? Histories of sociology limited to survey and analysis of previously published materials are problematic in three significant ways.

The Published Corpus is Skewed. First, published materials, as raw data, represent a highly skewed sample of all sociological writing (much of which is never published). Published materials as a whole reflect, at the least: (1) direct institutional support, such as research leaves, endowed chairs, travel grants, reduced teaching loads, computer facilities, research libraries, clerical and secretarial service, etc., (2) research grants from foundations and agencies whose review boards are typically dominated by academics from structurally-advantaged universities,<sup>26</sup> (3) mentoring by persons who have already published and who "know the ropes," (4) invitations by one's established professional friends to contribute to edited volumes and special journal issues, (5) sponsorship of a

volume by a series' editor, thus bypassing outside review processes, (6) access to "legitimate" self-publishing outlets, such as volumes published by "institutes," "centers," or "foundations," to which authors have sponsored or organizational entree, (7) gatekeeping by publishers who accept publishing proposals on the basis of "name recognition" rather than scholarly merit,<sup>27</sup> (8) gatekeeping by reviewers of manuscripts, and (9) active restriction by publishers to specialty interests that fit the publishers' "lists."<sup>28</sup> These structural factors skew distribution of the opportunities to become published, giving advantage to sociologists who are well-placed in a hierarchically-structured educational system. In the race to publish, the competitors face differentially distributed structural advantages and handicaps.

Differential advantage and editorial favoritism marked American sociology from the start. Editorial control of the American Journal of Sociology was used powerfully by Albion Small to shape the intellectual record of the founding decades of sociology in the United States. For example, when E.A. Ross asked in 1912 about placing an article in an upcoming issue of AJS, Small replied:

Sure. Take all the space you need. For outsiders the Journal is always crowded to overflowing but when any one in our proper constituency has a matter that is pressing we

always manage to find space. We could have crowded it into the November number if the copy had been in hand by October 10th.<sup>29</sup>

On the basis of such control, Rockefeller oil money, a relatively large faculty in sociology, and the momentum of an early start, the University of Chicago opened its doors in 1892 and immediately established a dominant lead in American sociology (Deegan 1988c; see also Appendix A).<sup>30</sup> This advantage continues to the present day, in part through the manipulation and hegemonic control of the University of Chicago Press, a point discussed further below.<sup>31</sup>

Selectivity is Unavoidable. Second, the amount of published material readily available (not including rare and obscure works) is far greater than any author or team of authors can possibly digest. Selectivity is a methodological necessity. Professional and organizational preferences play a crucial part in the selection of published materials to be included in historical reviews of the development of the discipline. For example, the ideas of one's mentors (and one's mentors' mentors, etc.) are known to and usually valued by each writer and are often justifiably cited in explorations of the development of sociological thought. Such work can, however, become de facto intellectual autobiography and, when restricted to lines of thought promulgated within a given department,

reinforce the organizational hegemony of structurally-advantaged academic departments. Since studies authored by members of advantaged departments stand better chances of publication (in addition to publication by a "good" press), the methodological necessity to be selective combined with a bias to select the works of one's mentors further skews the coverage and historical explication of published sociological materials in treatises on the history of sociological ideas. The author's intellectual mentors and forebears become enshrined as a result of this process.

If published materials are taken too much to heart, the published word is mistaken as reality rather than a seriously flawed reflection of disciplinary life. This problem is illustrated in Wells and Picow's (1981) study of the "theoretical and methodological structure" of American sociology. The authors base their conclusions on a content analysis of articles published in a single journal, the American Sociological Review (a "young turks" journal begun in 1936, forty-one years after the first volume of the American Journal of Sociology appeared). As a study in the history of the intellectual life of a discipline, Wells and Picow use not only narrowly unrepresentative data, but are markedly anti-historical, having ignored the formative years of the discipline during which the structural features of sociological study in the United States were set in place.

The American Sociological Review is an especially convenient data base, but intellectual history demands more than unreflexive acceptance of what amounts to easily available "canned" data.

Self-Reinforcing Intellectual Hegemony. Third, the system of structural advantage in scholarly publishing is self-reinforcing. Histories of sociology based on necessarily selective surveys of published works reify the leadership status and presumed intellectual genius of particular sociologists. These reifications then enter the published corpus and are then cited in subsequent studies as evidence of the disciplinary influence and importance of now well-known "stars." As the "stars" are typically from the "leading," structurally-advantaged departments, the reputations and prestige of these departments is reinforced, strengthening their ability to maintain existing advantages and attract future resources.

Numerous interpreters of sociology at the structurally-advantaged University of Chicago have produced self-promotional testimonials to the "Chicago School" of which they are descendants and/or beneficiaries (see Kurtz 1984, himself a Chicago product, to appreciate the massive volume of these works). The major works in this genre appear in the "Heritage of Sociology Series" begun in the 1960s and internally edited to the recent present by the

late Morris Janowitz, a professor on the faculty of the Sociology Department at the University of Chicago. Skirting the normally stringent outside review process, works in this series were typically commissioned by Janowitz and reviewed by persons chosen by Janowitz.<sup>32</sup> Books in the series are published by the highly respected University of Chicago Press. Intermingled with books by and about Chicago sociologists, the Heritage of Sociology Series includes classic works by widely-known non-Chicago theorists such as Max Weber and Emile Durkheim (and these volumes typically are edited by Chicago faculty or alumni) thus placing the work of some minor Chicago lights in the same category as widely-acknowledged disciplinary founders.

Mary Jo Deegan (1988c: 160), herself a Chicago doctorate, details the in-house "connections" of published commentaries on the Chicago School of Sociology. Her findings bear directly on the point at hand:

Historical accounts of the development of the Chicago School after 1920 depend primarily upon Park's and Burgess' own writings and that of their later colleagues and students. In addition to Park and Burgess, the authors of books and articles who are frequently cited as reliable resources on and major interpreters of the Chicago School of Sociology include the following: Robert E.L. Faris, their student and the son of another faculty member, Ellsworth Faris; Morris Janowitz, a student of Burgess and a faculty member in his own right; Everett C. Hughes, a student of Park and Burgess who was related by marriage to Park and a subsequent



member of the faculty; James F. Short, trained by Janowitz and yet another faculty member; Kimball Young a student of the early Chicago men, including Thomas and Park; and Donald Bogue, a student of Park and Burgess and again, another faculty member. Therefore, the influence of Park and Burgess on the interpretation of their work and era is particularly direct. These authors' published works, moreover, were primarily published through the University of Chicago Press which provided an institutional support for elaborating and perpetuating a heroic view of their living faculty, successful students, and "scientific" Chicago School of Sociology. The foundation of these writings has been even further buttressed over the last twenty years through the Heritage of Sociology Series, edited by Morris Janowitz. Although over thirty titles on sociologists' lives and writings have been published in this series, women sociologists have yet to be included as subjects of the texts. Many Chicago faculty and students have been involved as subjects or editors in the series, so there are few accounts of the development of Chicago Sociology that have been written by sociologists that challenge the in-house view of the originality and vitality of the Chicago School headed by Park and Burgess.

The Chicago School story reflects the mechanisms by which institutional advantage reproduces itself. Multiplied by institutionally-self-serving efforts at other sociological centers, the record of published materials becomes seriously skewed.

Richard Monk's (1986a) Structures of Knowing is a recent example of "Chicago building" that demonstrates how this process continues, even in books published outside of the University of Chicago Press. Monk presents an edited

collection of exercises in the history of sociology based on ideas attributed to Imre Lakatos' notion of "scientific research programs" and given currency (and jargon status as "SRPs") in sociology by Edward Tiryakian (1979, 1986; and Monk 1986b). In moving unreflexively to create their own niche in sociology (i.e., their own "SRP"), the contributors to Monk's volume fail to comprehend the pitfalls of reliance on the published sociological corpus as the primary data source for reconstructing the history of the discipline.

Boostrom and Henderson (1986), contributors to the Monk volume, exemplify the circular trap into which historical studies can fall. Consider their premise:

The greatest lasting theoretical impact of the Chicago school on criminology has been the contributions made to the conceptual understanding of crime and criminology by Edwin Sutherland, a product of the sociology department at the University of Chicago, and Clifford Shaw and Henry D. McKay, who were associated with that department during its period of hegemony in the history of sociology. The implications of this scientific research program for the work of Sutherland, Shaw, and McKay will be given particular attention. The body of work produced by these criminologists forms a basis for future advances in criminological theory and research. (Boostrom and Henderson 1986: 185-86).

The implied hypothesis that citation of works produced by an admittedly hegemonic and dominant academic organization demonstrates the "lasting theoretical impact" of those works

on subsequent contributions sponsored by that same hegemonic organization is tightly circular.<sup>23</sup> The self-promotion and manufacture of reputations by University of Chicago sociologists is explored more fully in Chapter 7 in relation to Roscoe Pound's role on the National Commission on Law Observance and Enforcement vis a vis the work of Shaw, McKay, and other sociologists, including Edith Abbott, Mary van Kleeck, and Hattie Plum Williams.

Suffice it to say, the prerogatives of institutionally-advantaged academics reproduce the stratified higher education system as a whole, and maintain a state of intellectual hegemony. In Morton Kaplan's (1971: 104) system analytic terms, the academic system exhibits the characteristics of a "system-dominant system" in which:

behavior that violates the rules or shared expectations may or may not produce particular gains but is extremely unlikely to change the system.

That is to say, such a system occasionally allows admission of outsiders who challenge "the rules," but these token exceptions make no substantial change to the system as a whole. "Cultural systems," Kaplan (1969: 66-67) adds, "are in general system dominant." Academics who occupy privileged positions in the cultural system work (albeit often indirectly) to maintain the system and only rarely admit that the system is not meaningfully open.

Sociologists are surprisingly mum about the structural dynamics of their own profession, surprising because this is one arena -- the structural aspects of society -- in which sociology claims expertise. Sociology of science (e.g., Merton 1973; Gaston 1978) does not critically turn its lens upon itself. Although there was some gnashing of teeth over a decade ago in works on the sociology of sociology (Friedrichs 1970; Reynolds and Reynolds 1970) and sociology of knowledge (Stark 1958; Remmling 1973) concerning the subversion of sociology by outside vested interests, there is quiet disattention to the service of vested interests within sociology. And the once critical examination of exterior interests may be subsiding. For example, Donald Campbell (1987: 89) resurrects Charles Darwin and Karl Popper to promote an apolitical (i.e., conservatively political) sociology of knowledge founded on "the variation and selective retention processes of evolutionary adaptation."

Our lack of disciplinary self-knowledge is appalling. Eitzen (1988: 279) points out:

Most sociology doctoral programs lack a formal course on the profession. Graduates of these programs are left to learn the norms of teaching, research, publication, and consulting from observation, by trial and error, or from the occasional counsel of mentors. The result of this hit-or-miss socialization process is not surprising: although most graduates are well

schooled in sociological theory, statistics, research methods, and substantive content areas, many are relatively unprepared for survival and success in their chosen profession.

Eitzen's point is well taken, although his proposal for a graduate-level course might well, if not carefully thought out, reify the existing pattern of structural hegemony by giving legitimacy to some professional "norms" rather than others.

It should be possible, however, for sociologists to formalize reflexive, empirically-grounded, disciplinary self-knowledge and thereby make it available to all rather than spoon-feeding it selectively and informally to the literally "chosen" few. Functionally, the wretched state of disciplinary awareness that Eitzen describes results generally in graduate students (and, in turn, faculty members) who are unable, even though "well schooled in sociological theory," to apply that theory toward a critical understanding of their own discipline. Such students lack the systematic knowledge base necessary to question or challenge the histories of the discipline as written by structurally-advantaged academics at the top-rungs of the academic hierarchy.

Roscoe Pound and Intellectual Hegemony. Writings by and about Roscoe Pound illustrate the points outlined above. Pound left a wealth of published materials on a wide variety of topics. These have been inventoried in two very useful bibliographies (Setaro 1942; Strait 1960). A portion of Pound's theoretical and substantive output appeared in sociological forums (i.e., American Journal of Sociology, Publications of the American Sociological Society, Social Forces, The Survey and in books edited by sociologists). Apart from the considerable intellectual merit of his work, Pound enjoyed favored access to the American Journal of Sociology as a former member of the law faculty at the University of Chicago and as a friend of Albion Small, the editor of AJS.<sup>34</sup> The bulk of Pound's work, much of direct interest to sociology of law, saw print in law journals. As a faculty member and then Dean of the Harvard Law School, Pound had ready access to the Harvard Law Review in which .. several of his major articles appeared. Suffice it to say here that whatever the intrinsic intellectual value of his work, the corpus of Pound's published work reflects in part his advantaged location in the hierarchy of higher education in the United States.

Published accounts of the history of sociology, however, make little, if any, reference to Pound's work and contributions to sociology. The Schwendingers (1974), for

example, reference an article by Geis (1964). Otherwise, one must look for works focused specifically on the sociology of law. Here one finds an occasional discussion (i.e., Hunt 1978: 11-36), a passing nod (e.g., McDonald 1976: 110-111); possibly a sentence or two (e.g., Podgoreck 1974: 14, 211); or no citation at all (e.g., Grace and Wilkerson 1978). Despite Pound's major contributions to sociology (Chapters 5-8), his work has been obscured (i.e., not promoted) by the architects of disciplinary ideology in sociology.

Pound's published corpus of sociological work represents two significant sides of academic publishing: (1) Pound illustrates the epitome of advantaged structural access to publishing opportunities (his published materials form the basis of the discussion in Chapter 8), while, at the same time, (2) he was a victim of structurally-advantaged sociological historians who pressed forward with their own agendas. Simply publishing sociological work, even in "major" sociological journals, is no guarantee that subsequent historians will take significant note of it. The published body of sociological works generally, and the published histories of sociology specifically, contribute to a "social construction of reality" in very concrete ways.

An adequate sociobiography of Pound's work in sociology cannot be based solely on published materials. Given a reasonably diligent survey of Pound's published work and the extant, published histories of sociology, one could conclude that Pound's ties to sociology were indeed slender. Given a less thorough literature review, one might conclude that Pound had no connections to sociology whatever.

A particularly pertinent example illustrates this point. The importance of combining archival data with the sociobiographical perspectives is made clear when one of the two major sociological essays to evaluate Pound's work is examined closely, specifically, Hunt's (1978: 11-36) chapter titled, "Roscoe Pound: A Sociological Jurisprudence?" (The other essay is Sheldon Glueck's 1964 useful, autobiographically-informed review of Pound's contributions to criminology). Hunt's book, The Sociological Movement in Law, is based entirely on the survey and analysis of published materials. Even though Hunt provides an impressive bibliography of Pound's work -- and states explicitly that he limits his review to "those elements that are most closely connected with the sociological aspects of his [Pound's] thought" (Hunt 1978: 11), Hunt fails to include any of Pound's articles in the American Journal of Sociology, Social Forces, The Survey, or the Publications of the American Sociological Society, or his article in Ogburn



and Goldenweiser (1927). Although Setaro (1942) is listed, Strait's bibliography of Pound's post-1940 work is missing. Further, Hunt's discussion omits all mention of Pound's sociological empirical work, including the Cleveland Survey of Criminal Justice (although listed in Hunt's bibliography), the Harvard Crime Survey, his work on the National Commission on Law Observance and Enforcement, or his survey of justice in eastern China. Hunt does not mention Pound's membership and committee service in the American Sociological Society, his founding of the American Institute of Criminal Law and Criminology, or his close ties to E.A. Ross. Hunt's only suggestion that Ross and Pound knew each other is revealed in a footnote in which Hunt (1978: 155) observes, apparently mystified, "It is interesting to note that it was to Pound that Ross dedicated his Principles of Sociology in 1921." Pound's location in an active network of leading sociologists goes unreported. Apparently not having read Pound's letters, manuscripts, and lecture notes, or visited Pound's personal library (Appendix E), Hunt (1978: 19) makes the extraordinary (and unfounded) claim that:

[Pound] drew only to a limited extent upon sociology; for all his extensive reading over many disciplines it was perhaps narrowist in the field of sociology. He appears to have studied only a limited number of American sociologists writing around the turn of the century.

Here, I want to prominently mark Hunt's essay with Bartley's (1987:450) proposed stamp of "Damaged Goods" (a label Bartley intends for all "authoritative" academic productions). This apart from the fact that at the turn of the century -- when Pound completed some of his most important writing -- sociology was a young discipline with only a handful of practitioners in the United States. There were not all that many sociologists whose works one could be expected to read.

Hunt restricted himself to an analysis of published materials and thus misunderstood the nature and context of Pound's sociological work. Clues to a more comprehensive, integrated understanding of Pound's sociological studies are embedded in published materials, but unearthing them and recognizing their significance is greatly increased by archival data, and vice versa. Writing disciplinary history and theory analysis based on published materials alone is tricky at best, and grossly misleading at worst.

Methodological Challenges and a Strategy. The wide-ranging discussion in the section above points to several difficult methodological issues in writing and interpreting the published history of sociology. Selectivity cannot be avoided. Self-reinforcing, structurally-based intellectual hegemony dramatically skews

the published data. A significant portion of the profession understands only dimly how the profession as a whole "works" in practice -- a situation that contributes to hegemonic processes. One methodological strategy (by no means complete in itself) for breaking out of the built-in traps of disciplinary ignorance and hegemonic socialization is to turn radically to the data in archives, to read what was said by whom to whom in what terms during the course of organizationally-situated academic work rather than depend on structurally-legitimated interpretations, rationalized apologies, or distorting rear-view glasses through which we individually and collectively misframe our sociological heritage in the present.

### Archival Research

Archival resources have been tapped only recently in history of sociology, and then only by a few authors who demonstrate careful, systematic use of these resources. Preliminary attention to archival strategies has been voiced in cognate investigations in the history of psychology (see, for example, a set of symposium papers on archival research in the Journal of the History of the Behavioral Sciences: Brozek 1975; Popplestone 1975; Bringmann 1975; Cadwallader 1975; Balance 1975), but these attempts are largely idiosyncratic and leave considerable room for more

systematic analyses of archival research processes. As with each methodological orientation to history of sociology discussed above, archival research also has its strengths and weaknesses. As the archival orientation is used as a framework for the present study, a theoretical analysis of archival research is reserved for Part IV of this chapter. A useful, introductory summary of archival research procedures, written from the perspective of an archivist rather than an historian of sociology, is found in Brooks (1969). The remainder of this section introduces the major features of archival research and identifies the most useful archival resources consulted for this project.

Intersubjective Verifiability. It is a norm of archivally-based research that each data source must be precisely described such that other researchers can locate the exact source. In other sociological modes, sources are clouded in anonymity, random sampling, and aggregated data summaries. In other sociological modes, there is no pure way to meet the scientific requirement for intersubjective verifiability because subsequent researchers can never replicate prior studies with precisely the same respondents or experimental conditions, or the same social conditions. Knowledge claims in archival research are open to direct, explicit intersubjective verification. The norm prescribing

careful documentation of sources runs deep in the traditions of historiography (see, for example, Littman 1976).

Published materials partially obtain the aura of objectivity by their very publicity. When the data for published works consist of other published (i.e. public) works (a nearly ubiquitous situation in history of sociology studies) the "public" legitimation of the author's private interests is problematic. That is, apart from the logic of the author's arguments, the legitimation of her work is partially grounded in the momentum of the works she cites -- a momentum independent of the veracity of those works. Books are written in private to be read in public -- the institutionally significant works are assigned in classrooms and digested in Great Books discussion circles.

On the other hand, writing publicly about archival data invites readers not to other published legitimations, but to the data, the specific letters and original manuscripts, "to get at the things themselves" (Schutz 1970-1971, III: 146). Archival collections are advertized in public to be read sequestered in the archive's reading room, to be confronted individually, without interpreters and guest lecturers. Published works can be read unreflexively with ease, but archival materials demand the reader's active interrogation and constructive integration. The document must be

confronted, "made sense of" by the reader without the aid of footnotes. Brichford (1980: 460) observes:

Large numbers of our fellow citizens are captives of nostalgia, cultural chauvinism, or patriotism which give them a very limited view of the past. Their "past" leaves them particularly susceptible to historicism and futurism. The careful study of archival sources in colleges and universities will provide a "past shock" that can open a new world to them. No human institution -- not government, not the church, not political parties, not professional organizations -- should stand between humans and their responsibility to understand their heritage.

Archival materials demand that readers become authors, not consumers, and the requirement for intersubjective verification is radically fulfilled in archivally-based historical research.

Cumulative Research. The archival data user, by citing precise, locatable sources, makes her research directly useful. Pragmatically, archival research is cumulative in the important sense that the identification of archival resources and specific documents (independent of interpretation) is information directly utilized by subsequent researchers. Each archival researcher contributes to an expanded data network as each discovers and documents new resources. Researchers discern new, verifiable patterns in the data and pass this information along to their colleagues, this too adds to the discipline's

knowledge. But Schutz' (1970-1971, III: 120) analysis of cultural knowledge reminds us not to take such knowledge as necessarily firm:

The overwhelming bulk of this knowledge is socially derived and transmitted to the individual in the long process of education by parents, teachers, teachers of teachers, by relations of all kinds, involving fellow-men, contemporaries and predecessors. It is transmitted in the form of insight, beliefs, more or less well founded or blind, maxims, instructions for use, recipes for the solution of typical problems . . . .

Schutz' phenomenological analysis reminds us that human knowledge is not necessarily trustworthy just because it appears to cumulate over time.

Strengths and Weaknesses of Archival Research. The rationale for writing disciplinary history based on the wide range of materials typically found in archival collections (such as personal correspondence, unpublished manuscripts, diaries, scrapbooks, and so on) involves considerations related to the strengths and weaknesses of the methods outlined above, autobiography, oral history, and surveys/analyses of published works. Short of clairvoyance, archived records and the personal papers of deceased disciplinary participants provide the only way to obtain insight into their activities beyond that discoverable through (a) published materials and/or (b) interviews with

living persons who still have vivid recollections about the deceased participant.

As a given historical period recedes further into history, the opportunity to interview not only the key participants but also the younger colleagues and students of those participants diminishes. Personal correspondence, lecture notes, grade books, letters of reference, departmental memos, and so on help fill the gap, placing researchers a little closer to the day-to-day events of a bygone disciplinary milieu. Unlike interviewers who can ask follow-up questions to bring out items of particular interest, archival researchers must settle for what they find available in archives or private collections. On the other hand, archival material can be consulted, photocopied and reconsidered again and again. Further, the content of a letter written fifty years ago remains relatively intact in an archive, ready for a researcher to find it and quote from it verbatim. Ask most academics to recall precisely what they said in a particular letter written fifty years ago, and one's appreciation of the strengths of archival resources increases considerably.<sup>35</sup> The "nuts and bolts" of archival research are outlined in Section V. Here it suffices to make note of the methodological problems of hegemony, selectivity, and cost.



(i) Archives and Hegemony. Compared to other types of archives, academic archives contain an especially wide range of materials (Brichford 1980: 455). Archival materials relevant to history of sociology are typically personal papers and manuscripts donated by academic sociologists (or by relatives, students, and/or former department) to archives at their home university. It is not always certain, however, that such donations will necessarily be accepted by an archive. Samuels (1986: 109) points out that:

A modern, complex, information rich society requires that archivists reexamine their role as selectors. The changing structure of modern institutions and the use of sophisticated technologies have altered the nature of records, and only a small portion of the vast documentation can be kept. (Empahsis added).

Samuels suggests possible strategies for confronting this problem, but the crux of the issue is that selective accession decision must be made. Jane Wolff (1981: 346) notes that while "the immense research value of faculty papers has been stressed by archivists and historians alike," it is still the case that "many university archivists remain unconvinced." Attempts to develop "archival theory" to address accession decisions (eg., Pinkett 1981; Burke 1981; Lutzker 1982; Elliott 1985) are

still embryonic. The procedures for accession (and organization) of archival materials are not well systematized, especially at academic archives which typically "have smaller staffs, budgets, and holdings; rely on students and part-time assistants; and handle records with a greater variety of subject content" (Brichford 1980: 455). Surprising quirks thus appear. Jane Wolff (1981: 346), for example, quotes a report whose authors were astonished to find that:

Even the papers of Nobel prize-winning scientists at elite universities like Columbia or the University of Pennsylvania are not being sought by their archivists.

(Closer to home, it should be noted that whereas the organizational records of the American Sociological Association have been accepted by the Manuscript Division of the Library of Congress in Washington, D.C., the ASA materials have not been inventoried and thus are "unavailable" users who are unwilling to sift through box after box of unsorted materials.) In sum, the accession and availability of academic papers is by no means certain, but within this framework hegemonic and prestige factors usually apply.

Availability of space, the "importance" of the faculty member, and other factors (such as presumed future use by

patrons) influence the archivist's decision to accept all, a portion, or none of the offered papers. Further, the archivist may negotiate for the right to select and discard materials at his discretion. If the donor is perceived to be an "important" person or have "important" items among her papers, the more likely she can dictate the terms of gifts to archives, any number of which may actually compete for an "important" collection. For "important" persons, especially those who had multiple institutional affiliations during their careers, collections of their papers may be found in several different archives. A comprehensive guide to major collections of archived papers and manuscripts in the United States is found in the National Union Catalog of Manuscript Collections. This growing, indispensable reference work presently stands at twenty-five volumes. Using this reference, researchers can identify the locations of archives having manuscript collections containing materials authored, for example, by Roscoe Pound, E.A. Ross, and so on.

The collection and preservation of archival materials mirror the structural factors that also shape the production of published materials. Brichford (1980: 455) observes:

Colleges and universities have sought to  
discharge their responsibilities or enhance their

reputations as research centers by collecting historical and literary archives and manuscript collections.

In this activity, "the prestige factor motivates both prince and legislator, president and dean" (Brichford 1980: 455).

Archives compete for the papers of institutionally-defined "important" scholars, not for abstract prestige simply, but as resources for faculty research and to attract graduate students and visiting scholars. The more scholarly books that are written about the former academics of a given university, the more the prestige of the university increases. "Major" scholars at "major" universities are more likely to have papers preserved in archives than are their lesser-known colleagues at small colleges (which may have limited space and funds for archival projects). The elite schools fully understand the structural importance of preserving and promoting their own history by maintaining excellent archival resources and services. Note, for example, that "Harvard University is not only the oldest American institution of higher learning, it has one of the longest traditions of archival concern" (Brichford 1980: 453).

(ii) Selection and Expenses. There are literally hundreds of archives in the United States,<sup>36</sup> and Brichford (1989: 454) notes that "the recent development of academic

archives has been impressive." A surprisingly wide range of materials are found in archives, especially in academic archives (for examples, see Appendix B), not all of which are relevant to a given project. Researchers must select which archives to visit and what to examine when they arrive. Despite care and planning, important archival sources can be easily missed, especially in the early stages of research. At other times, a gold mine of data may be found by chance or result from an offhand comment to an archivist.<sup>37</sup>

Archival research is considerably more expensive than writing disciplinary history on the basis of published materials. The latter are readily available in accessible libraries and interlibrary loans. Archival materials are typically unique, cannot be charged out, must be used in reading rooms with restricted hours of operation (typically Monday-Friday, 9:00 a.m. - 5:00 p.m., and many close during the noon hour), and can be photocopied only with permission (some will not allow more than a few pages of any one document to be copied, most archives do not allow the researcher to make the copies him/herself) at elevated prices.<sup>38</sup>

Sociology and Archives. Methodologically, historians have long used archival resources to explore historical

events, chronicle social movements, and write biographies. Production of knowledge through the use of archival resources is a well-established scholarly activity. The innovation in sociology is that sociologists now bring their special insight and particular interests to bear on archival material, the reconstruction of the historical record in general, and the historical record of the discipline of sociology in particular.

There is little specifically sociological literature to guide the researcher who makes use of archival data.<sup>39</sup> Some of the difficulties attendant on archival research have been explicated in an important but narrowly focused fashion by demographers who rely on archival records (e.g., the Domesday Book; tax rolls; and parish records of births, marriages, and deaths) as a basis for estimating descriptive population statistics for Europe prior to the advent of modern census records (Willigan and Lynch 1982). The demographers' interest is focused on the reliability of derivative numerical population estimates -- and thus presents limited help where more comprehensive insight into archival mechanics is required. Manuals on the use of archived, machine readable data archives, such as the Human Relations Area Files (e.g., Naroll, Michik, and Naroll 1976), are also tangential to the historian of sociology.

The classic text on alternatives to survey questionnaire methods in the social sciences, Unobtrusive Measures: Nonreactive Research in the Social Sciences, by Webb, Campbell, Schwartz, and Sechrest (1966), advocates the use of archival data when appropriate, but does little to prepare historical sociologists for the reality and variety of archival research.<sup>40</sup> Webb and colleagues constructively observed that archival materials are "traces" of past events and social interactions. On the whole, however, Webb and colleagues are rooted in an epistemological position that defines "unobtrusive measures" as techniques primarily for corroborating or triangulating data obtained from traditional sociological techniques, such as survey questionnaires. Webb and his coauthors do not explore the use of archival material for hermeneutic or critical historical analyses generally, or history of sociology per se.

More recently, Ken Plummer's (1983) Documents of Life offered an eclectic and elementary introduction to documentary materials holding potential use in sociology. Such materials, e.g., letters and diaries, are often found in archives, but Plummer's summary outline is not directed toward a detailed exploration of archival materials nor toward systematic analysis of documentary materials. Citing Thomas and Znaniecki's (1918-1920) The Polish Peasant as

perhaps the best-known sociological study based on life history documents and an exemplar justifying much increased use of life history documents, Plummer superficially discusses: (a) life histories, (b) diaries, (c) letters, (d) "guerrilla journalism," (e) oral histories, (f) sociologically correct fictional histories, (g) photographs, and (h) cinematic films (Plummer, 1986: 13-38). In his defense, Plummer notes:

I have been deliberately wide-ranging: From photography and film through diaries and oral history to self-analysis and letters. My intent, therefore, was not to be comprehensive but merely suggestive. (Plummer, 1986: 35).

Plummer's mea culpa notwithstanding, methodological rigor requires critical, systematic, and theoretically-grounded analysis of the methods and data sources available to users of life history documents in general and to historians of sociology in particular. The required analysis is delivered neither in Plummer's eclectic and introductory text nor in any other methodological treatise intended primarily for sociologists asking specifically sociological questions.

Sociological use of archival materials for other than demographic purposes is remarkably recent and is exemplified in work by Quadagno, Morris, and Deegan. Jill Quadagno's (1988) The Transformation of Old Age Security is based upon



many published sources, but also upon visits to several archives, including the National Archives in Washington, D.C., where she examined the "the vast files of the Social Security Administration" (Quadagno, 1988: xi).

Aldon Morris (1984) demonstrates the utility of archival source material for studying the sociological aspects of a social movement. Morris' analysis of the origins of the civil rights movement is partially based on interviews with sixty civil rights leaders, but archival materials were equally important data sources, including the Martin Luther King Papers and the papers of the Southern Christian Leadership Conference. Morris (1984: 327) noted:

Thousands of original documents (memoranda, letters, field reports, organizational histories and directives, interorganizational correspondences, and so on) generated by movement participants were examined. These sources contained a wealth of information pertaining to key variables -- organization, mobilization, finance, rationality, spontaneity -- relevant to the study of movements.

Morris' work highlights one of the inherent difficulties of archival research, i.e., the potential necessity to travel across the country to scan and evaluate thousands of documents.

Virtually alone in the field of the history of sociology, Mary Jo Deegan (1988c) used materials collected

over a ten-year period from twelve archives located in eight cities to build the documentary base for her analysis of Jane Addams' contributions to the founding of American sociology. In Part IV, below, the characteristics and problems of archival research -- upon which the present study depends -- are theoretically organized and explored using Erving Goffman's "Frame Analysis."

The Archival Record of Roscoe Pound. Roscoe Pound's archival record is especially rich. As the influential Dean of the nation's premier law school, he worked and corresponded with several persons in highly-placed organizational niches. Materials of special importance to the project at hand include: the Roscoe Pound Papers at the Harvard Law School Library; the Nathan Roscoe Pound Collection and the Olivia Pound collection in the State Archives, Nebraska State Historical Society; the Charles Bessey Papers, the George E. Howard Papers, and the University Regents' Papers in the University Archives, University of Nebraska-Lincoln; the Edward A. Ross Papers and the Richard T. Ely Papers at the State Historical Society of Wisconsin; the Paul Sayre Papers at the University of Iowa; and the official files of the National Commission on Law Observance and Enforcement at the U.S. National Archives. The Hattie Plum Williams Collection at

the Nebraska State Historical Society was invaluable for writing Chapter 7. A complete list of the archival collections consulted for this project is provided below, in the bibliography section.

As work on this project progressed, other useful materials were discovered and examined. These included original, one-of-a-kind typescripts found not in archives where they might be expected, but on open library shelves, specifically: a student's notes from Pound's course on jurisprudence (in the University of Michigan Law Library), special reports (in the University of Nebraska-Lincoln, Love Library), and minutes of a national meeting of the American Institute of Criminal Law and Criminology (in the University of Wisconsin Law Library). Microfilm copies of early student newspapers were found partially in the University Archives and partially in the Microforms Department of Love Library, University of Nebraska-Lincoln. University catalogs were consulted at Harvard's Pussay Library, Regenstein Library at the University of Chicago, and at the University Archives of the University of Nebraska-Lincoln. Turn-of-the-century Nebraska newspapers were consulted on microfilm in the Newspaper Room at the Nebraska State Historical Society.

**Roscoe Pound: Sociobiographical Research Strategies:**

History of sociology is typically written from the informed autobiographical perspective of an actual participant and/or by surveying and selectively analyzing the published empirical and theoretical work of sociologists. A few historians of sociology supplement these strategies by obtaining oral histories. Biographers trained in history rather than sociology typically use data from a wider array of sources (including newspapers, letters, memos, unpublished manuscripts, etc.) that reveal the fabric of the time and place in which the biographee lived.

A sociobiography of Roscoe Pound written under the umbrella of history of sociology requires reaching beyond the limitations of the published sociological record. Indeed, accounting structurally for the omission of Roscoe Pound from published disciplinary histories in sociology is itself an historiographical puzzle for the historian of sociology. One must go outside the self-reinforcing loop of published work to locate Pound the sociologist. The revelation of Pound's sociological work in the following chapters would not have been possible without the discovery and use of data from archival sources. The archival record not only supplements the story told in Pound's published

sociological studies, it considerably amplifies my understanding of his published work.

This sociobiographical study in history of sociology is based wholly on data from unpublished materials found primarily in archives (and, rarely, on open shelves in libraries), and published works found primarily in libraries and bookstores (and sometimes in archives).

The strategies of literature review, synthesis, and theory critique with reference to published materials are traditional, well understood methods in history of sociology specifically, and sociology generally (albeit these techniques and strategies are learned typically in a master/apprentice relation rather than as formally articulated processes). At the same time, the mechanics of utilizing and "making sense" of data stored in archival collections have not been explicated. The concluding portion of this chapter therefore presents a frame analytic perspective on archival research as a first step toward the systemization of research methodology in sociobiography and history of sociology.

PART V  
ARCHIVAL FRAME ANALYSIS

Introduction: Goffman's Theory of Meaning

This section identifies several interrelated processes in archival research by extending Erving Goffman's (1974) rich family of theoretical concepts that he explored in Frame Analysis. Goffman excavated a comprehensive schema or metatheory for "making sense" out of ongoing streams of activity. Goffman's overall strategy is adapted here to "make sense" out of the several situations which the researcher confronts (and "makes sense" of) in archival settings. The archival researcher engages in framing activity in five interrelated but distinctive arenas. Based on issues implicit in the following discussion of framing, this chapter concludes by noting the structural attributes of archives in relation to issues of technology and structural control. The subtitle of Goffman's (1974) study is: An Essay on the Organization of Experience. He systematically explored the ways in which people organize or "make sense" of their experiences within ongoing, face-to-face social settings.

Frame analysis enjoys an established niche as a theoretical perspective in sociology. Goffman is well-known for his studies of the microfoundations of interpersonal

interaction, but these have only recently been interpreted as having wider sociological importance. Goffman's influential early work includes: Asylums; Behavior in Public Places; Encounters; Gender Advertisements; Interaction Ritual; Presentation of Self in Everyday Life; Relations in Public; Stigma; and Strategic Interaction. With the publication of Frame Analysis, however, Goffman's microfoundational analyses took a much more formal, systematic turn that informs our understanding of macrosociological possibilities. Anthony Giddens now writes:

Goffman's writings thus contribute much more to an understanding of "macro-structural" properties than Goffman supposed. (Giddens, 1987a: 138).

In this section, I concentrate on Goffman's analysis of the ways in which interacting persons "make sense" of their situation and activities by resorting to "frames."

Frame analysis has been used to conceptualize a surprisingly wide range of social situations and activities, e.g., pornography (Deegan and Stein 1977), go-go dancing (Gonos 1976), master frames in social movements (Snow and Benford 1988), accidental pedestrian falls (Hill 1988b); and the threat of global nuclear war (Hill 1988a). Debates among theorists about the potential and limitations of frame

analysis are sometimes off the mark, and sometimes lively (e.g., Gonos 1977; Manning 1980; Denzin and Keller 1981; Goffman 1981b; Manning 1980; Schmitt 1985; Giddens 1987; Hill 1988a).

Goffman's work also extends to the equally important processes by which we organize our understanding of specifically historical situations. This is partially an artifact of Goffman's frequent resort to historically-situated episodes to illustrate theoretically important points. Goffman makes particular use of published biographical statements and newspaper/magazine accounts of historic events (e.g., quotations from The Autobiography of Malcolm X, p. 257; The Philadelphia Inquirer, p. 162; Life, p. 170; and Time, p. 180). Goffman thus committed himself to the unstated principle that exemplars drawn from past situations are fundamentally useful examples (or "frame fantasies") through which the structure of the present can be clarified (Goffman 1974: 14-16).

In Goffman's (1974: 21-39) schema, the basic interpretive categories or explanatory frames for all events (past and present) are two "primary frameworks" (i.e., "natural events" and "guided doings") supplemented by a set of ad hoc categories (i.e., "muffings," "stunts," "fortuitousness," and "astounding complexes" -- which, since Goffman did not provide a descriptive term, I call "bridge



explanations") into which one can place events that do not fit comfortably or wholly into either of the two primary frameworks. Taken together, these explanatory categories comprise a society's cosmology or "framework of frameworks" (Goffman 1974: 27). Goffman asserted that these categories or frames pre-exist in the sense that they pre-date the individuals who subsequently employ them to organize meaning in the world as they experience it. Importantly, Goffman's sense-organizing categories are historically prior socio-cultural structures.

Cosmological frameworks are rooted in and expressed through the institutionalized mechanism of language. Language is the fundamental social institution in which all other social institutions are grounded:

Language is not merely interrelated and interdependent with some of the other institutions; it is the primal and fundamental system among all of the coded and ordered systems of interpersonal and intergroup behavior. (Hertzler 1965: 94-95).

In Frame Analysis, Goffman provided a comprehensive, systematic account of the foundational, socially-derived conceptual categories, or "frames," used to nail down the cascade of raw, unorganized strips that flood the experience of our environments from moment to moment. His work extended ideas originally posited by Gregory Bateson

(Goffman 1974: 7-9), and echoed Max Weber's distinction between a natural "event" (to which no willful human agency is causally party) and a social "action" (which results from willed human agency).<sup>41</sup> Goffman's analysis of pre-existing, institutionalized frameworks of meaning is necessarily premised on historical and institutional ambitions.

Within the context of face-to-face interactions, Goffman explored the complex links between definitions of present situations and processes that re-organize historical understandings of prior events. In this sense, the meaning of the past is not fixed, but always subject to reinterpretation. In this sense, present understandings of past events are said to be "vulnerable" (Goffman 1974: 439-495). Goffman's (1974: 83-123) analysis of "fabrications" (e.g., lies and other constructions which "contain" an unsuspecting "dupe") is particularly relevant. Present discovery that a trusted friend, for example, was dishonest and perpetrated a deception to purposefully hide this fact, results in present discrediting of the friend and retroactive re-definition of the friend's prior actions. Goffman astutely recognized that the falsehoods we "discover" need have no basis in reality. It is fully possible to mistakenly think our friend unfaithful, and thus

wrongly start a wholesale reinterpretation of the friend's past deeds.

In addition to the notions of "fabrication," "containment," and "dupe," Goffman's concepts of "strip" (1974: 10), "frame" (1974: 10-11), "key" (1974: 41-82), "lamination" (1974: 82), "misframing" (1974: 302-324), "frame dispute" (1974: 321-338), "channel" (1974: 202-230), and "marker" (1974: 213) are useful to the project at hand. Before turning to a frame analysis of archival research per se, a skeletal discussion of Goffman's concepts is provided.

A "strip" comprises the ongoing, multifaceted activity of everyday life in any given setting. Goffman posited that we continually "frame" or "make sense" out of strips. When we conceptually organize this activity and, for example, respond to the strip as "work," "fighting," "playing", etc., we have framed the strip. In a very real sense, the operative frame at any given moment is what we answer to our own inquiry, "what is going on here?" Goffman suggested that human tolerance for ambiguity in everyday life is effectively nil, thus we frame all strips quickly and without reflection. It is possible to "misframe," to make a mistake of judgment as to what is "really" going on. We can get into "frame disputes" with our colleagues about what frame ought apply to a strip, e.g., "is this dissertation a sociological study or a philosophical fantasy?"<sup>42</sup> Serious

disputes about the status of "reality" are notably rare in everyday life, however:

In sum, observers actively project their frames of reference into the world immediately around them, and one fails to see their so doing only because events ordinarily confirm these projections, causing the assumptions to disappear into the smooth flow of activity. (Goffman 1974: 39).

My purpose here, however, is to rescue archival research from the "smooth flow of activity" in order to explicate its structural properties.

A "key" is a systematic transformation of a frame into something else. If I frame a strip of activity as "a team of sociologists conducting a survey," for example, and then write a "scholarly article" about survey researchers, the "article" is a key on the original frame. "Writing an article" is a particular kind of key, having a set of generally recognized rules or conventions, and if I do not follow those rules it will be hard to convince anyone that I have really "written a scholarly article" (for the operative rules, see La Nauze 1966; University of Chicago Press 1982; Becker 1986), I might, for example, be accused of "playing" at writing a scholarly article.

Keys can be compounded, for example someone can read my "article" and from that make a "television docudrama" for

the PBS series NOVA. Someone seeing the "docudrama" then writes a "review" for a newspaper. Someone reading the "review" writes a "friendly letter" about it to a colleague, and so on and on. In this way, frames come to have "laminations" which may be close to or comparatively distant from the original frame.

Activity in a frame is organized by "markers" which are conventionally understood. These "cues" tell us when frames start and end, and when significant acts within the frame should take place. Various markers, such as a professor clearing his throat, mark the start of a lecture, and a ringing bell can mark its official end. Markers of various kinds also indicate the internal organization of a frame (such as the periods, commas, blank spaces between words, and paragraph indentations that mark the internal structure of a page of writing). Such markers are typically ignored or "disattended" (Goffman 1974: 202). For example, when we are "engrossed" (Goffman 1974: 346) in a frame, such as when deeply involved in reading an absorbing book, we focus on the content of the book rather than concentrate on the markers that give it structure. The markers in seemingly ordinary interactions can be surprisingly complex and subtle.

The frame organizes the main business in a given setting, but there can be side business or "out-of-frame"

activity at the same time. "Out-of-frame" activity is officially "disattended," ignored as if it never happened. For example, students and professor are conscious of -- but routinely disattend -- a wide range of competing activities during the course of a class lecture. If out-of-frame activity becomes dominant, then the controlling frame is "broken," and must re-established for the original frame to continue (Goffman 1974: 345-377). For example, a student's muffled coughing is typically disattended during a lecture, but if he falls to the floor choking, a "frame break" occurs and, if the choking attack is serious, a new frame -- "a medical emergency" -- may be put in play. The instant of transition between the old frame and the new frame is a moment of ambiguity, a fleeting second where we ask, "What is going on here?" Intentionally generated "frame breaks" result in ambiguity and, if repeated often enough, in "negative experience," general hostility, and calls for order and calm (Goffman 1974: 378-438). Hollywood science-fiction horror movies key this very outcome -- which is tolerated so long as "it's only a movie" -- with considerable profit and success.

Goffman noted that we have the ability to attend to the official frame while unofficially monitoring competing events, i.e., to listen to music while studying, to monitor the clock while delivering a lecture, to "keep an eye" on

something while competently attending to the action in a dominant frame. The existence of multiple "channels" of action adds complexity to any given frame. Note too the possibility of "back channels" to which some persons in the frame are not privy, e.g., the surreptitious "passing of a note" from one student to another without the professor noticing, or the case of a colleague who enters the back of a classroom and pantomimes a message to the lecturer at the front of the room without the students noticing. Codewords permit concealed communication in the midst of ostensibly public conversation.

This definitional tour ends with a few words about "fabrication" (Goffman 1974: 83-200). Technically, a fabrication is a frame in which someone is purposefully kept in the dark as to what is "really" going on. That is, the "dupe" thinks that one frame is operative when the perpetrators know what the operative frame in fact is. Some fabrications are "benign" (as in the case of "practical jokes" or a "surprise" birthday party) where the fabrication is intended in the "dupe's" best interest. Other are "exploitative" (such as con games, frauds, and swindles) in which the "dupe's" interests are intentionally damaged, sometimes severely. In both keys and fabrications, a frame is transformed. But in keys, all participants in the frame agree about "what is going on." The complexity of

Goffman's analysis expands rapidly as he demonstrated that keys can be fabricated and that fabrications can be keyed, that the "dupe" who "finds out" but "plays along" can "recontain" the fabricators, and so on through numerous laminations.

Given the always present possibility of being deceived and the continual possibility of making mistakes about being deceived, Goffman concluded that the structural texture of everyday life is extremely vulnerable and prone to instability. Goffman conceived this state of affairs as a research problem: i.e., how do people operate, make decisions, and anticipate the future in such a potentially unstable world? The goal of Goffman's study is discovery of the concrete ways in which people manage the ever present vulnerability of their social worlds. For the task at hand, frame analysis is turned upon the process of archival research, i.e., how do researchers operate in archives and "make sense" of what they find?

### Archival Frame Analysis

Frame processes occur during archival research in at least five relatively distinct arenas, which I have called: (1) interactional framing, (2) indexical framing, (3) frame sedimentation, (4) reconstructive framing, and (5) iterative framing. These processes are here identified collectively



under the rubric, "archival frame analysis." Considerable framing activity occurs before the researcher ever reaches an archive, whereas other framing processes are initiated when the researcher visits an archive, and still others continue after the researcher departs. The following discussion outlines the components of archival frame analysis.

This analysis is based upon more than 50 visits to a wide variety of archival repositories during the past three years as a participant observer. Some archives have been visited many times while others have been visited only once. Although I have visited U.S. Government archives, my archival experience is primarily in archives maintained by colleges, universities and state historical societies.

### 1. Interactional Framing

Upon the researcher's arrival to first use materials in an archive, there is typically an important and usually mandatory interactional ritual: the orientation interview (Tissing 1984). This social interaction, like so many in this society, typically involves interactants holding differential claims to power and status (Deegan and Hill 1987), and it is usually the archivist who wields the most power in these negotiations. In many cases, the orientation interview is preceded by pre-interview interactions,

including exchanges of letters between the researcher and the archivist, or preliminary telephone conversations. During the interview, the resident archivist is introduced to the researcher. In some cases, the researcher is introduced by an organizational sponsor or by a researcher already well-known to the archivist. Typically, the introduction is not facilitated by third parties. There is much variation in the formality and depth of the interview, it may be casual, cursory and apparently superficial; friendly and professional; or stiff, pretentious, and needlessly prolonged. Interestingly, Conway (1986: 393) notes the "continuing reluctance of the archival profession to develop a better understanding of users." Whatever the format or depth, the interview must be successfully negotiated to gain access to archival resources. As Brooks (1969: 36) correctly observed, although from the point of view of an archivist, "Success in consulting primary sources depends upon the cooperation of the researcher and the archivist." The researcher who fails to frame this introduction as an interview heightens her chances of archival failure further down the road.

During the interview, the researcher explains her research project and endeavors to gain access to materials in the archive that she believes relevant to her project. Alternatively, the researcher tries simply to determine if

the materials in the archive might be relevant to her project. As Brooks (1969: 36) put it, "the better the prospective user can explain his needs, and the more clearly he understands the responsibilities to care for the materials, the better the result."

The archivist's organizational interest lies in promoting use of archived materials by researchers deemed legitimate by the archivist. Brichford (1980: 499) observes, "archives -- repositories and documents -- and the archivists who are responsible for them draw their identity from the institutions they serve." Simultaneously, archivists have an interest in protecting materials from damage or loss through over use or uses deemed inappropriate by the archivist. Thus, during the interview, the researcher must demonstrate her serious purpose and establish her legitimacy as a scholar. Identifying documents may be required, including a driver's license (with a recognizable picture of the researcher) and/or letters attesting to the bearer's status and organizational legitimacy at her home college or university. Whereas street people are found in public libraries, they do not gain access to archives.

Interactionally, the archivist "makes sense" of the researcher's "presentation of self" (Goffman 1959). Is the researcher legitimate? Is she a potential thief? Will she

use the documents carefully, without damaging them? Does the researcher "know her business"? Is this an important scholar who should be courted, or an overworked assistant prof who worries endlessly about writing the book she needs for tenure? Worse, is she just another graduate student writing a thesis that no one will read? Should she be helped or allowed to flounder on her own? Is the researcher's end product (a proposed book, thesis, article, or presentation) worth bothering about? What is the payoff for the archive if the researcher is admitted and staff time diverted from other projects?

Interactionally, the researcher also "makes sense" of the archivist. Is the archivist likely to be helpful, indifferent, or purposefully obstructive? Is she knowledgeable? Does she adequately understand the nature and significance of the researcher's project? Is she trying to dissuade the researcher from using the materials without reasonable justification? Does the archivist appreciate the researcher's time constraints? The researcher makes allowance for the possibility that the archivist is attempting to put on a "good face," as when Philip Brooks (1969: 36), himself an archivist, asserted, "a competent archivist is to be looked upon as a scholarly colleague of the researcher, far more than solely a preserver and a caretaker." While Brooks is correct on the face of it (a

competent archivist is truly a treasure), the researcher is well advised to recall archivist Maynard Brichford's (1980) sobering observation that "college and university archives embody a variety of intellectual experiences and are affected with a strong taint of amateurism."

Whereas an archive may house an institutions most rare and unique materials, there is no guarantee whatever that the archival staff is in fact competent. Frank Burke (1981: 45), himself an archivist, rails against the fragmentary training accorded to many who become archivists:

We have the two-week institute; the non-credit traveling workshop; the credit-earning but often discredited 3-credit "archives course" patched into a library curriculum to provide the students with "scope"; the officially sanctioned professional curriculum that concentrates on the practicum as the core of the training, thus assuring the student of "stack rat" status from the beginning; the uncoordinated parade of "instructors" (with no common syllabus, lecture approach, or standards), to which most archival students are subjected in the plethora of jury-rigged institutes.

Judging whether a pleasant, apparently helpful "stack rat" who has been to a non-credit, two-week "archives institute" constitutes "a competent archivist" who is "to be looked upon as a scholarly colleague of the researcher" is an interactional framing task of no little import.

The framing activity in the initial interview sets the tone and character of subsequent interactions (assuming the researcher is admitted to the archive). It determines in part whether the researcher is given special help or extra effort by the archivist and her staff. If the archivist becomes interested in the researcher's project, she may actively search for data that the researcher would not otherwise find. If the archivist is disinterested or frames the researcher as an annoyance or a dim wit, important data may remain locked in the vault, never reaching the unwitting researcher.

Experientially, the researcher can become virtually immobilized by interactional framing questions and the ambiguity it produces during the course of her archive visit. These questions can become too intrusive, generate ambiguity, discomfort, i.e. "negative experience." Archival materials are consulted by the researcher in a designated reading room, sometimes at an assigned table reserved for her use. During her work, the researcher is typically kept under virtually constant surveillance in a modern "panopticon" (Foucault 1979: 195-228) by the archivist and/or the archivist's staff assistants (and, in some instances, by uniformed armed guards). The researcher can become self-conscious about projecting any possibly "suspicious" behavior.<sup>43</sup> The reading room is typically

occupied by other researchers "engrossed" in their separate projects. If the archivist never again speaks to the researcher following the initial interview, the researcher questions "what is going on" if she sees other researchers receive frequent, friendly, apparently unsolicited advice and assistance from the archivist.

Interactions in the archive reading room are sometimes frustrating and ambiguous, and complicated by the bureaucratic organization of archives. In-fighting between the archivist and her staff assistants can catch researchers in the cross-fire. Assistants can purposefully blockade researchers favored by the archivist while going "out of the way" to help researchers who are snubbed by the archivist. Requests for materials from the vault can be filled quickly or take as long as several hours. The researcher's time, if she is visiting from another city, can be severely limited, and thus unexplained delays in receiving requested materials are particularly frustrating.

Inexplicably, staff assistants may studiously ignore the researcher or respond with "pained expressions" when she requests materials or submits photocopy applications. The archivist, for no apparent reason, may ask if the researcher is "just about done" when the researcher has only begun to scratch the surface of the available material. Such ongoing interactional ambiguities prompt the researcher to ask

herself, "What is going on here?" Bureaucratic explanations may be only partially satisfying. She sometimes questions whether she continues to be welcome, or if she presented herself appropriately during the initial interview.

The archivist's and researcher's initial framing of each other is always tentative and vulnerable to re-framing. If the researcher extends her visit over several days and expands her archival searches into areas not stipulated during the initial interview, the archivist may question "what is going on" with the researcher. Similarly, if the archivist entertained initial reservations about the researcher's intentions, these may be dispelled if the researcher exhibits systematic, organized use of the materials, handles the materials carefully, and asks the archivist astute, informed questions during the course of the project.

The ongoing mutual framing of archivist and researcher is especially important if (as is usually the case) the researcher intends to publish her findings in a book or article. In most archives, the researcher must obtain written permission from the archivist prior to publishing quotations from archival material. Typically, the researcher is compelled to sign a form acknowledging this requirement (and numerous other archive policies and rules) during the initial interview. The researcher must submit



copies of her manuscript pages on which the quotations occur, ostensibly permitting the archivist to verify that each quotation is properly referenced in a format approved by the archive, and to insure that copyrights have not been violated (for discussion by archivists on copyrights, see: Porter 1981; Crawford 1983; Post 1983). Pragmatically, the researcher's framing of the quotation within her manuscript is also up for review. The archivist can withhold permission at this crucial stage, and may do so if the archivist frames the researcher's proposed publication as shoddy, unscholarly, libelous, or worse.

The archivist occupies an interactional position of considerable power (much of this power derives from the structural attributes of archives, discussed more fully below in the final part of this chapter). Whereas the archivist and the archive benefit institutionally when competent scholars use the archives, the archivist generally has little vested interest in any one researcher, especially an untenured researcher visiting from a "minor" university. A single archivist can (with surprising ease and diffidence) block a researcher's entire project. The researcher, on the other hand, has little recourse. The archivist's framing of the researcher is a crucially important dimension of the archival research process.

## 2. Indexical Framing

By indexical framing, I refer to the process of "making sense" of hidden collections of archival materials that are not available for cursory or preliminary examination. Archives operate on a "closed stacks" basis, which means that researchers are not admitted to the actual storage area where the archived materials physically repose. Researchers face a classic "black box" situation: they must request materials without benefit of physical inspection. This situation has parallels to the childhood pencil and paper game, "sink the submarine." Knowing "what to ask for" is a major problem and it is negotiated in three interrelated ways.

First, the researcher typically asks the archivist if the archive contains materials relating to his project. This question assumes that (1) the researcher adequately frames his own project and (2) explains this frame clearly to the archivist. It assumes also that the archivist (3) correctly frames the nature of the project, (4) correctly frames the potential relevance of materials in the archive to the project, and (5) is appropriately knowledgeable as to the full contents of the archive.

Second, the archivist and/or the researcher consult the card-file index to the archive. This index is a principal key to the archive, and using it depends on understanding

that the compiler(s) of the index "made sense" of the materials in the archive in some ways rather than others (for ideal-typical models recommended for the organization and description of archival materials, see Gracy 1977). In addition, if the archive has been in existence for many years, the framing rules may have changed from time to time with successive archivists. Archives are typically arranged in terms of "collections," that is, sets of materials donated by a person or organization. (Government and some university archives are, however, wholly or partially organized along bureaucratic lines, i.e., by departments, commissions, agencies, etc.). As a minimum, the card index is typically organized alphabetically in terms of the names of the persons or organizations whose papers or "collections" reside in the archive. The extent to which the card index further subclassifies the materials in the archive is idiosyncratic to each archive.

Archives vary widely in terms of their system of organization. Gracy (1977: 1) posits this explanation:

The kaleidoscopic variety of systems of archival endeavor in North America developed not because each archivist deliberately set out to create an esoteric system. Rather it represents the application of the basic rules of archival enterprise to the situation of the time and place. No two operations enjoy the same

complement of personnel, budgetary resources, administrative independence, collecting goals, and on and on. No two operations ever will be exactly comparable.

Whatever may be the root explanation of these idiosyncratic organizational systems, in practice the researcher must be ever alert to myriad organizational rationales and resulting variations in indexical framing.

The degree to which archival collections are inventoried and indexed varies from archive to archive and between collections within the same archive. Comprehensive inventory and indexing is expensive and time-consuming, especially as a large collection from a single donor may contain literally thousands of letters and other items (see Appendix B for examples of the types of possible materials). For a given collection, the index may itemize the names of all persons with whom the donor corresponded. For other collections, the index may include only the names of "major" correspondents or simply note that the donor's undifferentiated "correspondence" is in the archive.

Not all card files are accurate or complete. For example, looking under the subject entry, "Pound, Roscoe" referred this researcher to one collection that did have Pound correspondence. In the same archive, however, was another collection that had an equal number of Pound letters

but this collection was not referenced in the card file under "Pound, Roscoe." In one archive, the subject entry, "Mead, George Herbert," indicated the referenced collection had materials indicating that he was "active in the Illinois Progressive Party," yet no material in the collection verified the assertion. In one archive, I was shown a pile of boxes filled with materials belonging to a nationally prominent scholar. None of the materials had been inventoried during the ten years they had been in the vault, and there was no reference to the materials in the card index. Such problems as the latter result from (1) the archivist's work priorities and (2) funding and staffing limitations. The consequences are passed in turn to researchers and those who read what they write.

The framing of the card index is typically organized in terms of names of donors and the names of persons with whom the donor corresponded. A supplementary index may be keyed to the chronological age of materials in the archive. Indexing collections by subject is usually eclectic and not comprehensive. For example, if the researcher wants to know if the archive contains any letters by sociologists, he will probably not find them indexed under the heading of "sociologists." Rather, he must supply a list of names of sociologists and check under each name. Hence, who the researcher frames as "sociologists" is an important step in

using the index to "make sense" of what the archive holds. Suppose the researcher wants to know if the donor corresponded with the American Sociological Society. It is not likely there will be a listing for "American Sociological Society." Rather, the researcher is required to know the name(s) of the person(s) at the American Sociological Society with whom the donor might have corresponded. At best, the card index is a very rough, uneven guide to the contents of an archive.

Third, the researcher usually has recourse to a finding guide for collections which have been inventoried. Some finding guides are very specific, whereas others are superficial. If a donor's collection is perceived to be especially significant, a detailed inventory may be available. The finding guide is usually a typewritten document placed in a looseleaf notebook. Finding guides for a few collections are published in book form. In general, the finding guide describes with more or less specificity, the contents of each box in a given collection. It may, for example, tell no more than that the donor's correspondence is in "Boxes 4 - 12" in the donor's collection. It may specify the inclusive dates of the correspondence in each box. If the researcher is fortunate, the finding guide contains an alphabetical list of all the donor's

correspondents together with the dates and locations of all letters.

Finding guides rarely catalog material by subject matter. If, for example, the researcher wants to find all of the donor's letters, if any, in which "sociology of law" is discussed, the researcher faces the task of reading all the letters in the collection. Hence, the potential importance of the archivist's knowledge of the specifics of the collections. The archivist may be able to shorten the search process and lead the researcher directly to relevant boxes in a collection. On the other hand, the archivist may dissuade the researcher from sorting through a collection that the archivist believes will yield little of interest to the researcher. Both scenarios hold traps for the researcher.

Archivists sometimes present themselves as thoroughly knowledgeable about the contents and significance of certain collections. In such instances, the archivist may lead the researcher immediately to useful materials or counsel that the collection has little of use and thus advise trying other collections, if not other archives. Both responses may be accurate. On the other hand, there may be much more in a given collection that is actually useful to the researcher than the archivist perceives. Conversely, the archivist may assert that "there is much that should be of

interest" in a given collection when the opposite is the case. Thus, the crucial importance of the researcher's initial framing of the archivist comes into play. Does the archivist know whereof he speaks? If he does, the researcher is saved hours of fruitless search. If he doesn't, the researcher can be inadvertently duped (if not purposefully contained in a fabrication).

On the basis of partial information from the card index and finding guides, combined with assertions from the archivist, the researcher must "make sense" of the materials in an archive. Conservatively, the researcher is not far off his mark if he frames the archive as a warehouse of unknowable size stocked with uncountable miscellaneous storage devices (typically "shelves" and "boxes") filled with a potentially large array of archived items usually arranged by "collections," and not all of which are inventoried or even listed in the card index. He understands that only a few boxes can be obtained for inspection at any one time and these must be requested on the basis of an inadequate card index, incomplete finding guides, and advice from an archivist who may have a sadly erroneous conception of sociology as a discipline.

As the researcher's resources become more constrained, the indexical framing problem facing the researcher increasingly obtains the characteristics of a social "game"



(Leinfellner 1976) in which the researcher tries to maximize payoff while limiting losses of time and energy. Alternatively, the situation is conceptually similar to the problem of confronting error in statistical inference.

To the statistician, "the error of failing to reject an hypothesis when it is actually false, is referred to as a type II or Beta error (Blalock 1972: 113). Accepting an archivist's judgment that a given collection has no relevant material, when in fact it does, is the logical equivalent of a type II error. Conversely, electing to read dutifully through a collection which an archivist assures the researcher will be helpful, but isn't, is also an error of the this type.

At the same time, "we also run the risk of making another kind of error, that of rejecting a true hypothesis. We refer to this kind of error as a type I or alpha error" (Blalock 1972: 114). Stubbornly searching a collection which the archivist has correctly advised will be of little use is the logical equivalent of a type I error. Conversely, sceptically disregarding an archivist's correct advice to read a collection that would in fact be very helpful is an error of the same type.

In frame terms, a double layer of frame questions appears: (1) did the index and finding guide compiler and the archivist correctly frame the contents of the archive in

terms useful to the researcher's project?, and (2) did the researcher correctly frame the adequacy of the indexers' and archivist's skills?

In an ideal world of unconstrained investigation, the researcher simply bulldozes these dilemmas by systematically consulting every potentially useful file, letter, and manuscript available. In using the Archives of the History of American Psychology, for example, Popplestone (1975: 22) advised:

The ability of the archival staff to serve the historian is directly correlated with both the specificity and breadth of requests. For maximum yield the student should enumerate all individuals whose papers might have relevant data. The key words in this guideline are individual and all.

In the practical world of limited budgets and bureaucratic deadlines, however, the problematics of indexical framing cannot be avoided. Pragmatically, the researcher avoids high-risk fishing trips.<sup>44</sup> He concentrates on (1) large collections of known or highly probable relevance to the research project,<sup>45</sup> and (2) collections in well-staffed, professionally-run archives with sophisticated archivists and detailed finding guides to help quickly limit searches to materials of high potential utility to the project.<sup>46</sup> Mathematically based sampling techniques may be useful in

certain situations where hundreds of very similar documents must be surveyed (cf., Boles 1981), but are of little use in searches for the specific, unique, detailed data required for studies in the history of sociology. As time and resources permit, the researcher expands his search to additional archives and collections. Brooks (1969: 45) observed, "There are practically no topics of major research (that is, say, of the scope of a doctoral dissertation) that can be studied adequately in one repository of papers."

### 3. Frame Sedimentation

By frame sedimentation, I refer to the multitude of shiftings, sortings, and re-orderings by which and through which items come to reside physically together in a given archival storage box, ready to be requested and consulted by a researcher. The cumulative aspect of sedimentation that I intend here is emphasized by Alfred Schutz (1970-1971, III: 123) when he wrote:

The actual stock of knowledge is nothing but the sedimentation of all our experiences of former definitions of previous situations . . . .

When a researcher locates and finally opens a file folder of archival material, the particular set of items in the folder

are the final result of three successive waves of framing, of attempts by others to "make sense" of something.

Primary Framing: Over a lifetime of work, an active scholar's research, writing, and teaching generates a large amount of correspondence, manuscripts, lecture notes, and other materials, typically including a large personal library. These materials accumulate in a variety of places under the scholar's control, e.g., her office, her laboratory (or its equivalent, such as a library study room), home, garage, leased storage space, summer cottage, etc. The way the scholar frames or "makes sense" of this massive accumulation is the initial, or primary framing to which these materials are subjected and may partially determine the order in which they are later found in an archival collection.

The scholar may consider her accumulating letters, manuscripts, and so on to be "interesting," "useful someday," or just something that should be "saved." Weinberg (1972: 239-240), for example, wrote of E.A. Ross:

Seemingly, Ross practiced what many of his generation felt to be a cardinal virtue: he saved and filed everything of any importance -- report cards, manuscripts, typescripts, lecture appointments, financial records, copies of income tax statements, and newspaper clippings.

Unless the scholar simply piles one thing endlessly on top of another chronologically as it is used and "filed," she imparts some other "order" to her accumulation, but her "personal filing system" may be such that only she understands its rationale. Many academics of my acquaintance employ mixtures of systematic filing together with eclectic practices having no apparent system.

The scholar's "logic" for filing and rearranging materials affects the internal order of her accumulating materials. Apparently eclectic materials that are related in the scholar's mind (mementos of a year abroad, for example) may be thrown together in the same drawer or box. At times, a scholar may sort through her files looking for items on a particular topic of interest, separate them from their original files and re-file them together in a new file. The scholar may keep crucially interrelated parts of a given project in two or more different places (such as home and office).

Periodic urges to "clean house" result in rearrangement for some materials and discard for others. Where one scholar may be amused by her early, embryonic drafts of papers -- and keep them, another may become increasingly embarrassed by them -- and toss them out. Some academics are conscious of the potential archival value of their correspondence and take pains to carefully preserve it.

Others prefer the streamlined aesthetics of a clean desk and empty file cabinet. The scholar's "making sense" of her accumulating materials determines the internal arrangement of the materials and whether particular items or classes of items are retained or discarded.

Secondary Framing: Materials generated by a scholar often come to be "made sense" of by a potentially large number of intermediary framers. First, materials accumulate in places not under the scholar's control, including: department, college, and university files, the files and libraries of colleagues and former students, publishing houses, journal editors' offices, and the files of professional organizations to which the scholar belongs and/or holds office. In each, the materials are arranged in various ways, mixing materials together unpredictably. Materials are selectively saved and discarded materials. Second, secondary framing becomes very important at the time a decision is made to place the scholar's materials in an archive. Unless the scholar pre-empts this decision to herself, other make it for her. Several people (potentially including family members, academic colleagues, and former students) may "make sense" of the scholar's files, sorting and rearranging them, before the materials are transferred,

if ever, to an archive (it is probably the case that most scholars' papers are simply discarded).

Politically sensitive or personally embarrassing materials may "disappear" at this point. Materials that the scholar saw as closely related, or as part of a "master plan" of long term research may be seen as isolated, incomplete parts (and labeled and filed as such). In addition to the scholar's own materials, it is likely that some of the materials from college, university, colleague, journal files, etc., will eventually find their separate way to one archive or another, possibly to remain separated from the scholar's own papers.

Tertiary Framing: When a scholar's papers, manuscripts, books, and miscellaneous memorabilia arrive at an archive, they come under the control of professional organizers who likely know little about the scholar, her filing idiosyncracies, or the nature of her work. It is their job to "make sense" out of what can be literally thousands of letters and mountains of manuscripts. Archivists may have discretion to discard materials they deem relatively unimportant, such as "junk mail" left behind in the scholar's desk. Typically, correspondence is sorted by date. Thus, for example, one box might contain all the scholar's letters from 1939, with 12 folders in the box, one

for each month of the year. Within each folder, letters are typically arranged by day of the month. Archivists intend this order to be maintained once it has been established. A researcher who disturbs the internal chronological order of a folder or box quickly finds her welcome in the archive at an abrupt end.

The cataloging and arrangement of materials other than letters tends to be ad hoc. Typically, materials of a given type, such as "lecture notes," "diaries," or "book drafts," etc. may be placed together. "Oversize" scrapbooks of newspaper clippings and other mementos do not fit in standard archive storage boxes, and are filed separately. Family photographs are sometimes placed in separate photograph collections in a different department of the archive. Archivists frame the scholar's materials in terms of chronology and identifiable authorship, not in terms of subject or in terms of the scholar's "personal filing system." If the scholar's library is preserved intact, it is likely that the volumes are rearranged, and not grouped as the scholar would have done herself.

Frame Sediment: Thus, through the processes of primary, secondary, and tertiary framing, materials come to reside in boxes and file folders that the researcher opens to consult. These materials are "frame sediment," the residuals of many attempts over the years by several people



to "make sense" of the scholar's accumulated letters, manuscripts, files, etc. The physical order in which the materials reside together in an archival folder is an imposed, external order. For example, a group of letters from a friend that the scholar kept in a special file are now likely separated, interfiled chronologically with dentist's bills, manuscript reviews, travel authorizations, and birthday cards.

The materials in the archival file folder are by no means necessarily the most important or significant materials that might have been saved. For example, the term papers remaining in the scholar's files may simply be those that indifferent students never bothered to pick up from her office. If the scholar made a practice of writing quick replies to letters on the letters received and sending them back to the senders, then the letters that remain in the file drawers may be precisely those she thought not worth answering. The really interesting memos may be the ones that were crumpled in anger and thrown in the wastebasket. Again, framing is at work, designating some activities as "meaningful" and others as "trivial." Framing activity leaves residual traces in the environment, including file cabinets.

Materials make their way to archives by myriad paths and are given arbitrary assignments to archival boxes and

file folders. This outcome involves framing activity from start to end. From the "frame sediment" in archives, the historian of sociology seeks data that can help "make sense" of a discipline and its practitioners. The researcher "keys" or transforms her discovered data into a disciplinary account. This is the next significant step, how does the researcher "make sense" of the sediment she finds in the archival file?

#### 4. Reconstructive Framing

Admitted to the archive, seated before boxes of manuscripts, the researcher proceeds to "make sense" of the materials at hand for the purpose of reconstructing the history of sociology. I call this process reconstructive framing. Goffman's concept of a "strip" helps orient the discussion.

The "strip" is a foundational concept in Goffman's (1974: 10) analysis of meaning:

The term "strip" will be used to refer to any arbitrary slice or cut from the stream of ongoing activity, including here sequences of happenings, real or fictive, as seen from the perspective of those subjectively involved in sustaining an interest in them. A strip is not meant to reflect a natural division made by the subjects of inquiry or an analytical division made by students who inquire; it will be used only to refer to any raw batch of occurrences (of

whatever status in reality) that one wants to draw attention to as a starting point for analysis. (Emphasis added).

Strips comprise the raw, unorganized occurrences to which socialized adults quickly and routinely apply organization and meaning.

Historians of sociology confront a "raw batch of occurrences" when they meet archival materials face-to-file folder. The task is to "make sense" of the materials and the data they contain with a view to writing a sociologically-informed account of the discipline of sociology. Conceptualizing the extant items and their sequence in archival file boxes as "strips" does not deny the organizing, sorting processes of frame sedimentation. Prior framing of the items was accomplished by "engrossed participants" who acted within frames to which the researcher was likely not a participatory party. By thinking of archival materials as "strips," the researcher frees the material from the concretization of frame sedimentation to be re-organized (i.e., framed anew) for the purposes of history of sociology. By consciously thinking of the archival record as a "strip," the researcher forces himself to understand that the tertiary, secondary, and primary framing of the materials during frame sedimentation may be at cross purposes to his questions as a sociological

researcher. The internal frame markers of archival organization (i.e., boxes, files, chronology) need to be actively conceptualized as arbitrary anchors of organization rather than disattended.

For example, the running dialogue between two correspondents may gain in significance if isolated from the chronological record as a whole. Topical rather than temporal organization of materials is often helpful, e.g., to gather all ASA committee correspondence together, or all letters on "ecology." Letters of reference, filed by the principal correspondents' names, may hold invaluable information about the person discussed by the indexed correspondents. The postmark date on a "get well" card or "sympathy" message may explain why a scholar missed an ASA meeting or never answered a colleague's request for help. The yellowing leaves filed by an archivist as "lecture notes" may be the "lost" half of an unpublished book manuscript. Materials gathered by the archivist as "miscellaneous memorabilia" may contain the invitation to a White House reception held during an academic convention in Washington, D.C. Similarly, theater ticket stubs, playbills, and concert programs can establish a scholar's travel to conventions and international congresses.

Conceptualizing archival holdings as "strips" reminds the researcher that such collections are undoubtedly partial

in character. Noting what is not in the collection may be as important as knowing what survived. Absence of materials does not mean they or their authors are unimportant to the history of sociology. Conversely, the concrete survival of an item does not mean that it is "important." In using archival data to piece together the history of sociology, the researcher asks not only "what does this item tell me?" but also, "why is this item here, why did it survive and not something else?" and "what is missing?"

This process and the activities in archives are not wholly systematic guided doings. The absorbed scholarly calm and the ordered, professional serenity of a well-appointed archival reading room (some with deep carpets, leather chairs, and stained glass windows) can camouflage a variety of activities. These include archival muffings (e.g., misfiled, mislabeled materials), archival stunts (e.g., thefts of well-guarded material), astounding complexes (e.g., inclusion of "bizarre" materials in an otherwise "understandable" collection, usually marked by the archivist's announcement, "I can't imagine where this came from!"), and fortuitous discovery (e.g., finding useful materials in unlikely files). Events and materials in archives are not always what they seem.

Archival items vary structurally in communicative complexity. I here refer to what (Goffman 1974: 201-246)

calls "out-of-frame activity." Communication media often carry more channels of information than they officially advertize within a given frame. Written communications (using such devices as code words and inside jokes) may contain "concealment channels" which the uninitiated reader may not recognize (Goffman, 1974: pp. 210-223). Indeed, an author may have carried concealment to an extreme, such that given letters were never sent to the intended correspondent (yet reside now in an archive to be misinterpreted as a "communication").

Written media may also have "overlay channels" conveying two or more sequences of communication, possibly written at different times. For example, Edward A. Ross frequently made lists of "things to do" on the backs of letters he received from correspondents. Archivally, the letters are indexed by name of correspondent. Ross' "overlay channel," however, carries quite different data -- sometimes of a domestic nature, sometimes plans for "hunting trips," etc. -- that were "disattended" and not indexed by the archival managers of the Ross papers. In other cases, organizational letterheads frequently carry data about the organization's officers, committee structure, and membership networks that are totally independent of the letter writer's main agenda. Additional examples of multiple channels include marginal notes made in books, instructor's comments

on examination papers, "tick marks" indicating possible choices in book catalogs, and doodles beside frequently called numbers in a telephone book. Overlay notes penned in the margins of letters may be marks made not by the donor, but by a biographer who used the letters prior to transmittal to an archive.

The researcher confronts the possibility that he is being contained by the donor or some other meddler during the process of frame sedimentation. Perhaps the donor "planted" fabricated materials in his archival legacy? Containment can be benign (and the researcher serves as the butt of the donor's practical joke) or exploitative (in which the researcher is duped, for example, into discrediting the donor's former enemies). Both possibilities may seriously distort accounts of disciplinary history. These frame possibilities are very real, and they reflect the built-in, structural vulnerability of human knowledge.

Methodologically, the researcher remains open to alternative ways to "make sense" of the physical traces that reside in archives. If the materials and the organizational frame established by the archivist are taken for granted, the researcher risks misinterpretation and reduced access to useful data. The concreteness of the order imposed by the archivist's labels, chronologies, and file folders is

directly experienced by the researcher as materials are made available to him on a box-by-box basis. It is tempting to take this imposed order for granted, as something real-in-itself. Each researcher must consciously ask: (1) how might the historical "strip" be otherwise organized for my purposes, and (2) what multiple (possibly disattended) channels of communication exist within the surviving, sedimented archival record?

### 5. Iterative Framing

"Making sense" of archival data as a whole is an an iterative process in which the researcher organizes and imputes meaning to the historical strip through repeated reconsideration of her data combined with the constant infusion of new data. The intellectual and historical significance of archival materials shifts continually during the process of investigation. Through iterative framing, the researcher moves beyond recognizing a particular letter as interesting-in-itself to frame it as part of an evolving picture of the history of sociology. This process is the culminating phase of archival frame analysis.

During iterative framing, the researcher can (1) re-visit archives to re-read materials, and (2) visit new archives to expand her data base. In the first case, she may see something "new" in a document already carefully



considered and, perhaps earlier dismissed as irrelevant. Re-reading collections is an important step in archival research. This is greatly facilitated today by microfilms and the ability to photocopy materials for use at one's home base where they can be re-read at leisure. From re-reading, alternative organizations of the archival record are suggested, and this in turn results in the integral connection of once seemingly disparate data.

In the second case, she may discover previously unseen data that significantly alter her prior understanding. The density of the researcher's data base increases as more archives are visited. "Both sides" of correspondence between two writers can be obtained, thus placing the "one side" previously known in a new light. Third party commentaries may be discovered. It may develop that an author writes one version of events to one correspondent, and different accounts to others. New data are "made sense of" comprehensively, and not simply pigeon-holed. The iterative framing of archival material is cumulative. The researcher continually reshapes her understanding as she "fits," "sorts," "shifts," and "reinterprets" more and more data into her evolving general frame of the history of sociology.

The archival researcher shares much in common with "the stranger" (Schutz 1970-1971, II: 91-105) who visits and

"makes sense" of the social lifeworlds of a previously unknown place and time. As Alfred Schutz (1970-1971, II: 96) put it, the stranger "becomes essentially the man who has to place in question nearly everything that seems to be unquestionable to the members of the approached group." It is a phenomenological paradox that to understand the organization, rules, and conventions of a group of scholars in times past it is necessary to understand them consciously whereas the historical participants simply took these for granted. Alternatively (and unforgivably) the researcher simply projects modern meanings onto the historical record and thereby jettisons the phenomenological dictum to "bracket" her presuppositions (Schutz 1970-1971, I: 104-106).

The stranger in Schutz' strange land, unlike the archival researcher, is embedded in a series of ongoing social interactions. These situations permit the stranger immediate opportunities to test her mastery of local customs in situ, aided by authoritative residents who can correct her mistakes. The archivist, on the other hand, "visits" the past, discerns patterns, and returns "home" to the present to publish her findings. The "reality check" occurs at "home" rather than in the place and time from which her data are radically abstracted. She can understand the past, but not as the participants experienced it in the "natural

attitude" (Schutz and Luckmann 1973: 3-20). However, in terms of the sociological task of making rules, conventions, and organization explicit, she may better understand "history" than did the participants she studies.

The potential to read and re-read archival data with the benefit of hindsight and widening disciplinary understanding places the archivist in a radically different relation to events than that experienced by historical participants at the time. This can be addicting. For example, one reads E.A. Ross' 1899 Christmas letter to his adopted mother telling of his happy satisfaction with Stanford University knowing that Ross will be fired in 1900 and become the center of a national free-speech controversy.<sup>47</sup> One reads Roscoe Pound's youthful self-estimate that he will become a "pretty fair lawyer," knowing that he will later be Dean of the Harvard University Law School.<sup>48</sup> The perspective of the present often tempts researchers to frame the past as irony. But, disciplinary history is much more than irony or idiosyncratic story line (interesting as these may be in themselves). Disciplinary history is, rather, the culmination of organizational processes and institutionalized forces.

The search for sociological understanding of disciplinary history is a methodologically complex framing problem replete with traps and detours. This search

requires reflexivity, openness to alternative frames, attention to multiple data sources, and peripatetic investigation in archives across the country, if not the world. Sociological framing of intersubjectively-verifiable data lies at the heart of research in history of sociology. Findings in this field of investigation are tentative and subject to constant re-interpretation; it is not a project for researchers who seek unchallenged truths. Received dogmas are fundamentally inimical to archival frame analysis in history of sociology.

#### Structure, Control, and Technology in Archives

A particular strength of Frame Analysis is Goffman's insightful attention to the structural aspects of communicative behavior and the built-in potential for deceptive communication in human interaction (Goffman 1974: 156-200). The structural attributes of archival repositories are such that archivists generally wield greater power over the materials in their charge than do their librarian colleagues. The relevant structural features of archives include: (1) the uniqueness of archival materials, (2) restricted access to archives, (3) donor retention of private property rights over archival materials, (4) the non-circulating character of archival resources, and (5) the division of archives into frontstage

and backstage regions, with patrons barred from access to the later. Recent developments in technology, however, pose interesting questions concerning the future importance of these structural issues.

Archived materials are typically unique, one-of-a-kind items which cannot be obtained elsewhere. Uniqueness is a structural factor which makes access to particular archives essential for given projects in history of sociology. By comparison, the published books and journals housed in research libraries seem ubiquitous and universally accessible. The closest library equivalent to an archive is a rare book library with restricted access, such as the Newberry Library in Chicago, but many of the materials at the Newberry are available on microfilm and at similarly specialized libraries. A library approaches the structural advantage possessed routinely by archives only if the library has the only known copies of particular books.

Access to archives and archival resources must be negotiated and permission granted (typically during the orientation interview) before researchers can obtain archival data. If permission to use a library is denied, the researcher simply goes to another, comparable library and continues, or requests needed materials through interlibrary loans. If permission to use an archive is

denied, however, a researcher's proposed project may be scuttled.

Donor's (and the heirs of donors) of archival materials often retain private property rights over materials held on deposit in archives. Donors may permit materials to be used only by scholars who receive the approval of the donor or his executor. Donors (or their executors) may place stringent restrictions on the quotation or publication of materials placed in archives. Such restrictions apply above and beyond the copyright protections that apply generally to unpublished manuscripts and personal papers (Strong 1984). In contrast, donors who make gifts of books and/or journals to libraries typically retain no personal control once the gift is accepted by the receiving library.

Archival materials are not only unique, they are typically non-circulating. Thus, researchers are obliged to travel to the archive and remain in the vicinity for as long as access to the archive's resources is required. The necessary expense of travel and lodging is a further structural aspect of archival research, tending to limit use to in-house scholars and those with sufficient time and money to make the required trip(s). Well-endowed archives may have small grants available to help defray travel costs. An archivist's influence over these funds is another structural control over practical access to materials. Some

universities provide subsidized housing (i.e., dormitories) for "approved" scholars using archival materials. At the least, archivists generally have knowledge of inexpensive housing options for visiting researchers. Whether or not archivists share this information or help arrange for university housing can effectively limit a researcher's access to materials.

As noted above, because archival materials are kept in restricted areas to which patrons are typically denied access, archives have built-in "backstage" areas. The researcher has no particularly good way of verifying what materials are in the vault or if they are being made available for his use in a reasonable and timely manner. If a patron is told that certain materials have been "misplaced" or taken out of circulation for "repair and restoration," he has no way to check the veracity of these statements. Thus, structurally, archivists are provided with a mechanism to deny access to materials even while appearing publicly to be helpful and "open." How often this mechanism is used, of course, cannot -- by its very nature -- be verified. Goffman's (1974) and Bok's (1978) documentation of rampant fabrication by professionals in modern life weighs heavily against the hypothesis that archivists do not contain their patrons -- at least on occasion.

Technology and Archival Research. Technological developments and the widening application of these technologies during the last two to three decades result in significant changes in archival framing and issues of control. Two developments are especially important: microform technology (especially microfilm) and various photocopy processes (especially Xerography). These technologies are combined in the case of microform reader/printers.

Microfilm technology presents several possibilities. A relatively few collections are totally recorded on microfilm. This raises issues related to control. Where researchers may once have been given access to original documents, they may now be restricted to using the microfilm copy except in specially approved exceptions. Such restrictions may save "wear and tear" on the original materials and better protect them from theft. They also generate a new category of privileged access to "original documents."

Film copies are frequently less desirable to use for many reasons, including: (a) lost ability to distinguish quality of paper on which the manuscript is written, (b) reduced ability to distinguish between originals and carbon copies, (c) loss of color data when filmed (as is typical) in black and white, (d) creases or folds in paper are



sometimes not visible on film, (e) pagination sequences on "folded note" stationery (unless carefully numbered) are more difficult to decipher, and, generally, (f) the image of any given document or series of documents may be far less than optimal. As microfilm is literally a "strip," the user loses the ability to "leaf through" a file quickly. He must check each frame before reeling on to the next.

Once placed on film, however, it is relatively easy to manufacture duplicate films. Copies of "important" collections are thus becoming available for purchase, usually at high prices (often thousands of dollars). Questions of institutional hegemony are plausibly raised concerning which collections are microfilmed and which are not. The wider availability of a few "major" collections is likely to increase their use and thereby reinforce the perception that these are, in fact, "major" collections.

Sale of films to major research libraries, erodes the "unique" quality of an archival collection, and greatly reduces the archivist's "control" over access to once one-of-a-kind materials. Films are easily shipped via mail and replaced if lost. Thus, a few archives are willing to lend microfilms via interlibrary loan. This reduces the cost of travel dramatically, and with a portable film reader the documents can be read in the comfort of one's own home.

Permission to publish materials from the films still resides with the parent archive.

Microfilm technology is not likely, however, to alter the necessity for historians of sociology to become itinerant travelers to distant archives, at least for some time to come. Filming even a small collection is an expensive and time-consuming process. Typically, preparation of detailed finding guides is also expected when collections are filmed. Few collections of sociologists' papers have been microfilmed. Notable exceptions include the papers of W.E.B. DuBois, Jane Addams, and E.A. Ross. The papers of these sociologists are heavily used due to particularly significant participation by these scholars in the political and intellectual life of the nation. The papers of most academic sociologists, however, are little used or read by historians, and thus not likely to become candidates for microfilming. In consequence, the full set of archival framing processes is not much disturbed in practice by the technology of microfilming.

Photocopy technology poses quite another set of problems and opportunities for archives and archival researchers. When carefully made, photocopies are often "better" than the originals. The paper is often less fragile, control of copy contrast can enhance faint documents, documents can be enlarged and/or reduced with

ease. Compared to the cost of filming an entire collection, photocopies are produced inexpensively "on demand" as requested by researchers. Investment of a few hundred dollars in photocopies of carefully selected documents garners a researcher a significant set of archival data with which to work later at his leisure.

Photocopies can be physically re-organized and sorted into topical categories at the whim of the researcher. Letters from different collections and different archives can be combined and read side-by-side. Microfilms, on the other hand, are typically owned by major libraries or loaned for brief periods by archives and must be returned. The researcher rarely keeps possession of archival microfilms for any length of time (unless he can afford to buy them). Researchers' personal files of photocopies, however, create small private archives to which the research can return at will, and continually expand through further research. Researchers can share photocopied materials cooperatively, although this is sometimes prohibited by archive rules.

Attempts to control photocopying vary considerably. In some cases, ownership of photocopies remains technically with the archive. The researcher may be required to promise return of the copies when his project is complete, and he usually agrees not to make further copies of his copies. These provisions are difficult to enforce, however, once the

researcher has his copies. Inexpensive, self-service copy machines are now ubiquitous. A given historian of sociology tends to expand his researches along developed lines of inquiry, thus his "project" is never "finished" -- and the photocopies are rarely returned to the originating archive.

When the audience for scholarly research on minor sociological figures is sufficiently small, de facto publishing of archival material without the required permissions is likely. High speed photocopy machines make reproduction and distribution of "draft" discussion papers at academic conferences easy and relatively inexpensive. Once archival data are released into the academic system in this way, control over further dissemination is made extremely difficult.

Of the two major technologies to have an impact on archival research, photocopying is presently the more beneficial to researchers. It permits shorter archival visits, visits now designed primarily to tag items for photocopying rather than to carefully read or analyze documents in detail in the archive. Because the researcher sees the original document, he can make notes where necessary about the color(s) of the document, whether the document is a carbon copy, etc. and subsequently file this information with his photocopy. Careful sifting of materials takes place at the researcher's home office where

clear photocopies of documents from a variety of archives can be consulted together. Photocopying also greatly reduces introduction of errors through hurried note taking at the archive. If it is worth taking more than one or two notes from a given document, archivalists find it worthwhile to make a photocopy.

Historians of sociology have made comparatively little use of archival resources in the past, but the powerfully reconstructive data unlocked by archival framing suggests that archival work will seriously challenge the now privileged status enjoyed by disciplinary histories based solely on published materials. Photocopy and microform technologies are likely to speed the advent of this challenge.

#### Archival Frame Analysis and "Forms of Talk"

Scholarly research in archives is understood here as an interrelated set of framing activities. Archival research involves active framing on several levels, sometimes simultaneously. The researcher not only "makes sense" of her data, she is frequently involved in settings where she must "make sense" of her own status and activity as a researcher. Explicating this engrossed situation requires "stepping back" from archival work to bracket the archivalist's presuppositions, to consciously admit the

potential for fabrication and the vulnerability of archivally-constructed knowledge. Historians of sociology do not make "truth claims" so much as they make "frame claims."

As academic discourse, history of sociology is a "form of talk" (Goffman 1974: 496-559, 1981a) with conventions and expectations which are ignored by researchers at some peril to their careers. By writing, reading, assigning, and teaching "acceptable" history of sociology (i.e., "acceptable" in the widest scholarly sense), sociologists sustain these conventions as culturally, socially, and sociologically meaningful. The meaning of history of sociology as a form of talk is not found in truth tables. Rather, "a good story well told" affirms our belief that the past can be apprehended, understood, made sense of, framed as guided doings. And that (I contend Goffman would agree), is culturally no small matter. Further, it explains why readers demand that no little attention be paid to the anchors of disciplinary history, that is, to the source

documents and adequate citations. To answer Catherine Stimpson's provocative question, "truth" may be a shell game, but "forms of talk" are much more than shell games, they are the structures of social meaning.

\* \* \* \* \*

This is what archival frame analysis is about.<sup>49</sup>

### Notes for Chapter Two

1. Quotation is from Stimpson (1987: 5). With reference to the state of theory in literary criticism, Stimpson, a former editor of Signs, proposes a feminist theory of literature that is not only political but also reflexively calls its own premises into question. Such a theory, she writes,

could not abandon its political commitments to writing history; to exposing the ways in which ideology, discourse, and culture have malformed different women; and to women's taking and overtaking of ideology, discourse, culture, and power. Abandonment would strip the feminism from feminist criticism. However, it might choose to ally these commitments to a theory that questions the very language in which we now articulate them. The possibility or impossibility, the probability or improbability, of such an alliance is now at issue in literary scholarship.

2. ASA Didactic Seminar on Historical Sociology convened by Larry J. Griffin and Jill Quadagno, Annual Meeting of the American Sociological Association, Atlanta, Georgia, 25 August 1988.

3. The "didactic seminar" is a relatively new format at professional sociological meetings in the United States. The seminars, held during the national ASA meetings, are characterized by advance registration, limited enrollments, payment of special fees, and a scholarly orientation, including seminars on topics such as historical methods, logit regression analysis, ethnographic methods and new methods for cultural studies. Their purpose differs from the "professional and teaching workshops" which "have become a standard component of the Annual Meeting" of the American Sociological Association. In contrast:

Didactic seminars are designed to keep sociologists abreast of recent scholarly trends and developments. Experts considered to be at the forefront of a given field are invited by the Program Committee to conduct these sessions. (American Sociological Association 1988: 5).



I was privileged to attend the Griffin-Quadagno seminar on historical methodology during the 1988 ASA meetings in Atlanta.

4. Along similar lines, I explore elsewhere the apparent inability of this culture to attend creatively to the extraordinary threat of global nuclear annihilation (Hill 1988a).

5. Elsewhere, I illustrate this distinction by identifying features of the "Baby M" surrogate parenting case that are personal troubles, on the one hand, and public issues, on the other (Hill 1987).

6. The institution of language offers a particularly apt illustration. Unless one adopts a "private language," even our most secret thoughts are processed and packaged in institutional wrappers (Hill 1985).

7. Five years of counseling students (and not a few faculty members) who have come to me for "advice" about school, family, and "relationships" convinces me of the efficacy and power of the structural perspective. When problems can be framed in terms of power differentials, resource budgets and allocation, structural (dis)advantages, statuses, role strain, role conflict, etc., rather than motivation, adaptation, ego, personality, etc., it becomes possible to help students inventory and mobilize their personal resources and to sometimes understand that some situations are structurally problematic and that no amount of "stress management" or "coping skills" will change matters. There are a surprising number of people who believe they are "failures" or are convinced that "something is wrong" with themselves who could be much happier and more productive by consciously discarding a problematic role or two rather than trying to "adapt" to role expectations they do not have the resources to meet.

8. With thanks to the Bergers, Durkheim, Martineau, Weber, and numerous other sociologists, I proceed on the basis of the following assumed definitions. Patterned, institutionalized activity exists in all nooks and crannies of society. Such patterns, when restricted to or found only in special segments of society might be termed proto-institutions. The patterns of scholarly citation in the discipline of sociology are one example. Such routinized behavior, however, is typically located within larger, more encompassing social patterns. By major social institution, I mean a pervasive, coercive, regulatory

pattern, specifically, one within a society as a whole (however defined) that exhibits: (1) an established and durable history, (2) virtually universal acknowledgment of the existence or relevance of the pattern, (3) effective methods of social control (used and/or threatened) to coerce conformity to the pattern, (4) acknowledged justification or rationalization of the pattern in the society's (civil and/or religious) system of morality, (5) pervasive consequences (in some manner) for virtually all members of the society, and (6) mutually reinforcing linkages to other major social institutions. Examples in modern societies include: language, family, education, law, religion, and polity, each with associated bundles of institutionally-prescribed bundles of roles and associated role expectations. Usually not considered "institutions" in sociological discourse, but no less significant, are the historic, pervasive, and coercive discriminatory patterns of classism, racism, sexism, able-bodyism, ageism, and so on. These patterns frequently meet the formal criteria of "major social institutions" except that discriminatory patterns (1) are typically denied by those who benefit from them, and (2) while rationalized in the dominant belief system are not always validated in the moral systems of the victims of oppressive discrimination. Sociologists generally relegate the "dark side" of valued, "positive" social institutions (e.g., family, religion, law) to ghettoized discussions of social problems rather than pursue the mutually-reinforcing integration of discriminatory patterns within the present structures of major social institutions. That is, social problems are often conceptualized as peripheral rather than structurally integral to the maintenance and continuity of ideologically-favored institutional patterns. When I employ the term institutionalized discrimination I wish specifically to acknowledge the integral function of discrimination for maintenance of the present form, content, and arrangement of proto-institutional practices, major social institutions, and society generally.

9. I share the disdain voiced by Irving Louis Horowitz a few years ago at the meetings of the Midwest Sociological Society when Hal Orbach of the University of Kansas chided Horowitz for failing to include certain intimate details in Horowitz' (1983) intellectual biography of C. Wright Mills. In his reply to Orbach, Horowitz said: "If you want to know about Mill's intellectual career, read my book. If you want to read about people's private lives," continued Horowitz in a dramatic crescendo, "read People Magazine!" (Source: personal tape recording).

10. According to Mead, "It is only by taking the roles of others that we have been able to come back to ourselves" and, "we appear as selves in our conduct insofar as we ourselves take the attitude that others take toward us" (Mead 1968: 284). "It is important to recognize that the self does not project itself into the other. The others and the self arise in the social act together" (Mead 1968: 314). "What I am suggesting is that this process, in which a perspective ceases to be objective, becomes if you like subjective, is an instance of the organization of perspective in nature, of the creative advance of nature" (Mead 1968: 316).

11. Stanton, for example, defends the title of her edited collection, The Female Autograph, thus:

The excision of bio from autobiography is designed to bracket the traditional emphasis on the narration of "a life," and that notion's facile presumption of referentiality. . . . It is not, then to take the life out of literature that this melange is called The Female Autograph, but instead, and in an ideal sense, to create a more generous and dynamic space for the exploration of women's texts that graph the auto. (Stanton 1987:vii-viii).

Critiquing the cultural implications of the term "autobiography," Stanton ignores the fact that her preferred substitute, "autograph," also harbors problematic meanings, including the familiar "signature" (implying nominal brevity) and the more technical:

Trace of an object produced in a photographic emulsion by the mechanical, electrical, chemical, or radiation effects of the object itself" (Webster's Seventh New Collegiate Dictionary, Springfield: G. & C. Merriam, 1969:59).

This formula introduces physicalistic imagery far removed from Stanton's humanist concern (not to mention sociological interest). For purposes of the analysis at hand, being neither particularly brief nor mechanically radiant, I retain the terms "autobiography" and "biography" -- subject to clarification where needed.

12. In a previous analysis of the public issues surrounding surrogate parenting, I used Mill's framework to segregate these issues from Melissa Stern's private troubles as a principal in a disputed surrogate parenting contract (Hill 1987).

13. Hertzler to Ross, 10 October 1929, Box 15, Folder 5, Edward A. Ross Papers, State Historical Society of Wisconsin (hereafter, Ross Papers).

14. Ross to Hertzler, 12 November 1929, Box 15, Folder 5, Ross Papers.

15. Hertzler to Ross, 26 November 1929, Box 15, Folder 5, Ross Papers.

16. George E. Howard, undated manuscript, "Sociology in the University of Nebraska," (33 pp.), Department of History, George E. Howard, Manuscripts, University Archives, University of Nebraska-Lincoln.

17. For specific examples, see the Howard-Williams correspondence in the Hattie Plum Williams Collection, State Archives, Nebraska State Historical Society; and the Hertzler-Ross and Webster-Ross correspondence in the Edward A. Ross Papers, State Historical Society of Wisconsin.

18. As a two-time member of University of Nebraska- Lincoln Vice-Chancellor Search Committees, I received and reviewed hundreds of resumes authored by academics with a wide range of abilities and experience, but none presented anything in a discrediting manner. Subsequent efforts to verify the qualifications of some of the candidates revealed that a few resumes, while technically truthful, were functionally fiction.

19. In each of five departments in which I have held a full-time teaching position, I have been asked to write a formal "annual report" at the end of each academic year. At one university, we were told by the department chairperson to include a list of "areas in which you need to improve during the coming year." This instruction resulted in several jokes and considerable mirth among the faculty members. At another school, I was given the more pragmatic instruction, "Just put in what you think the dean would like to hear."

20. The aura of disinterested scientific management in which program self-evaluation reports are typically packaged could lead unwary researchers far afield. As a program evaluation consultant during 1987-1988, I advised twenty public service agencies which conducted mandated self-evaluations as a condition of continued funding. In all types of agencies, large and small, efficient and inefficient, urban and rural, administrators conducted and wrote self-evaluations in a manner designed to project the best possible "face." The administrators I observed went to almost any length perceived necessary to protect their funding. When asked what he would do if derogatory data were uncovered in the course of self-evaluation, one administrator replied candidly, "Hey, my mother didn't give birth to no dummy!" Several administrators obfuscated, submitted data on obviously inappropriate forms, and re-categorized data so that information deficiencies could not be detected without a careful audit. Such behavior is predictable -- and pragmatically rational -- when, as in this case, agencies compete with each other for limited funds allocated by a central source which uses the information in the self-reports as input to its fund allocation decisions. Similar results can reasonably be expected when self-studies by academic departments are submitted to deans who set departmental budgets or to university presidents who must choose which departments to eliminate during financial exigency.

21. During my year as acting assistant dean in the College of Design at Iowa State University, my administrative assignment included serving as chairperson of the college's Promotion and Tenure Committee. The materials initially included in promotion and tenure files (over which the candidate for tenure and/or promotion has initial control) are carefully selected to present the candidate in a good light. When derogatory data about a candidate were brought forward, via members of the committee, they were (to my dismay) presented verbally without leaving any trace in administrative files. If archived promotion and tenure files are utilized at some future date to reconstruct departmental activities, they must be used with extreme caution.

22. During a year's experience as day-to-day administrator of the Design Research Institute at Iowa State University and service as a member of the Iowa State University Research Grants Committee, I have written, read and evaluated numerous research funding proposals. A minimum central concern in any proposal is to present the applicant

as a knowledgeable, fully-qualified candidate for funding. Thus, there is a tendency to stretch the strengths of the applicant and his/her sponsoring institution. A history of funded sociological research based on a survey of successful proposals stored in official agency files would show ipso facto that federal dollars went to well-qualified principal investigators.

23. Personal interview.

24. In the course of my continuing study of the experiences of young academics during the ten years after the award of their Ph.D., I have interviewed several faculty members about their professional work. Many display deep ignorance about even the most fundamental structural realities of academic life. Others deny structural oppression when the facts of the case are easily obtained. Most base their understanding of promotion and tenure on rumor and gossip rather than systematic inquiry and research.

25. In one instance, I saw the University of Nebraska-Lincoln library discard one of (what I now believe to be) two existing copies of a work containing contributions authored by a former sociology department chair, Hattie Plum Williams. A professor who was later asked if the two-volume set should be placed in the Department library, replied, "Who wants this thing anymore?" Fortunately, the volume was rescued by yet another faculty member and now resides in the Department library.

In another instance, during the 1987 Library Book Sale at the University of Nebraska-Lincoln, hundreds of books and pamphlets (several rare and many bearing handwritten annotations) from the personal library of Edith Abbott were summarily sold at fifty cents and a dollar each. Abbott was one of the nation's outstanding sociologists, and certainly one of Nebraska's most distinguished graduates. A large portion of the books were purchased by an astute book dealer (Scott Wendt of Bluestem Books, Lincoln, Nebraska) and by Professor Mary Jo Deegan (of the Department of Sociology at the University of Nebraska). Books that remained unsold by the Library were donated to a second-hand store, where Deegan found several additional volumes after systematic search. Wendt and Deegan pooled their purchases and a list of the books was compiled (Deegan and Hill 1988). The books have now been enthusiastically welcomed by the Hull-House archives at the University of Chicago at Illinois where they will be carefully preserved as "The Bluestem Collection" (see also, Lincoln Journal Star 1987). It was only by

chance that the Edith Abbott "Bluestem Collection" was saved.

In yet another case, I learned of a faculty member who when asked to help "weed" an academic library systematically excised all early books written by "missionaries" about non-U.S. societies, saying, "Those books give students the wrong idea about social research -- and they're biased and out-of-date anyway." The point is simply and tragically that rare and often irreplaceable volumes are sometimes (and possibly routinely) lost with surprising ease and thoughtlessness.

26. In a related example, I participated on a review-panel for a U.S. Department of Transportation five-year research plan. The panel established priorities for research funding. Members of the panel routinely supported narrowly-defined topics in which they or their home organizations had established track records. The atmosphere was collegial and mutually supportive, there was no criticism of this process. When the five-year plan was subsequently announced it offered "competitive research funds," but the topics eligible for funding had already been pre-selected by the research organizations already best able to "compete."

27. When I submitted a proposal for an edited volume of contributed chapters to be written by scholars I thought had interesting new insights, one scholarly publisher responded, by telephone, "It's a great topic, but really, who are these people?" The publisher would proceed to evaluate the proposal only if I could give assurance (which I did not provide) that "recognized authorities" would write the proposed chapters.

28. From a letter recently received from a scholarly publishing house, "Thank you for allowing us to consider your proposal. Your project has merit and is well conceived. Unfortunately, your topic does not fit the needs of our list at this time. We wish you every success with another publisher."

29. Small to Ross, 15 October 1912, No. 7, MSS, RV, Edward A. Ross Papers, State Historical Society of Wisconsin.

30. In terms of faculty and course offerings, the University of Chicago was an attractive choice over the other possibilities for graduate study in 1893. Appendix B lists the schools, instructors, and advanced courses offered

at the eleven leading universities in the United states. It is evident that Chicago dominated the field.

31. Visitors to the campus in Hyde Park see ample signs of the images that University of Chicago students are encouraged to internalize. One T-shirt proclaimed: "Harvard: The University of Chicago of the East." Another bore a long list of the names of University of Chicago faculty members who have received Nobel Prizes. At recent commencement exercises at the University of Chicago, I heard President Hanna Gray welcome everyone in attendance not to the University of Chicago, but to "the university." At a recent Department of Sociology Annual Dinner at the Faculty Club in Hyde Park, I observed that awards of internal graduate student fellowships (of the type routinely awarded in virtually every Ph.D.-granting department without fanfare) were announced, to much applause, as though students had won nationally-recognized awards. The fellowship recipients and officers of the sociology graduate student association were introduced as "the next generation of leaders in American sociology." Identification with prominent faculty and internalization of the idea that "you are the best" does have concrete results. During an interview with a University of Chicago Ph.D. graduate, he lamented when I asked about his research, "Of course, I'm embarrassed that I don't have my first book out, my friends from graduate school have already published their first books." Webster, Conrad, and Jensen (1988) report that when the National Academy of Sciences ranked Ph.D.-granting departments of sociology in terms of scholarly reputation, the faculty at the University of Chicago ranked number one in the United States.

32. Anonymous informants.

33. This same circularity plagues the bibliographic citation studies (e.g., Garfield, Sher, and Torpie 1964) that attempt to explore intellectual influence by examining who cites whom. Unless critically planned, all such studies do is document the distribution of organizational resources.

34. The readiness of Albion Small to accept work from Pound in the American Journal of Sociology is documented in the Pound-Small correspondence, specifically: Small to Pound, 27 July 1909; 23 November 1910; 28 June 1912; 1 July 1916; Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.



35. For example, the taped interview with Roscoe Pound, conducted by Robert Manley when Pound was nearly 91 years old illustrates the problem. Pound was noted for his extraordinary memory (for example, see anecdotes in Kocourek 1947). Nonetheless, Pound made an error in his recollection concerning Amos G. Warner, placing Warner in the wrong graduating class ('87) rather than the correct class ('85) at the University of Nebraska.

The transcript of the tape also illustrates a different source of error. The transcript has Pound reporting that Warner taught in Chicago (actually, Warner went to Johns Hopkins, back to Nebraska, then to Washington, D.C., and finally to Stanford). In fact, if one listens to the tape, Pound actually states that it was a man named Peterson who went to Chicago to teach. I was alerted to the potential for such errors in the transcript by Joseph Svoboda. Transcript and tape-recorded interview with Dean Roscoe Pound, Harvard University 12 July 1962, interviewed by Dr. Robert Manley; Roscoe Pound Biography and Bibliographical File, University Archives, University of Nebraska-Lincoln.

36. The 1987 Directory of Special Libraries and Information Centers (Detroit: Gale Research Center) lists more than 18,000 special libraries, including archives, in the United States. The precise number of archives is not specified. This reference identifies each archive by name and location, provides a general description of materials and services, hours of operation, access, address and telephone number(s).

37. For example, when I went to Washington, D.C., to use the National Archives, I visited the Library of Congress on a very different errand. There, I learned (only by virtue of a casual remark made to an archival assistant) that David Wigdor, the leading Pound biographer, held a position at the Library of Congress. When I interviewed Wigdor the next day, he asked if I knew that Roscoe Pound's personal library resided in Washington (a collection I had assumed was at Harvard University). As a result, I was able to visit the collection during the five hours that remained before my return to Lincoln via a non-refundable airline ticket.

It was from a brief reference in a letter in the Nathan Roscoe Pound Papers at the State Archives at the Nebraska State Historical Society that I learned that Pound deposited his personal papers from the National Commission on Law Observance and Enforcement in the Harvard Law School Library. It turns out that those papers are kept separately from the Roscoe Pound Papers at Harvard and when I asked to

see Pound's papers, the archivist didn't initially make the connection to the Commission papers. Without the prompt from the letter, I would not have known to ask specifically to see the Commission Papers when I did not find them in Pound's Papers per se.

In a last example, I stopped on a whim in Iowa City, Iowa, to ask if the University of Iowa Archive had any of Paul Sayre's papers, since Sayre taught at the University of Iowa and wrote a biography of Pound. I told the archivist I was interested in Sayre's work on Pound. Pound's name did not appear in the catalog for the archive, but it turned out that Sayre had borrowed and kept a box of Pound's letters from the years when Pound worked on his doctorate in botany.

38. At the time of this study, 1988, the typical self-service photocopy price in libraries and commercial establishments, such as Kinko's, is 3.5 to 5.0 cents per copy. Archives, however, typically charge anywhere from ten cents to fifty cents per page. Archives rarely offer "same day" photocopy service, and can take as long as several weeks to fill a photocopy order. Thus, it is often necessary to have materials mailed to the researcher's home. Some archives require advance payment, others will bill the researcher for photocopies. In addition, archives typically apply a minimum handling charge of several dollars to mail even one copy to another city. A few archives provide reasonably priced (i.e., ten cents per copy) self-service photocopy machines. The demand for access to the machines, however, typically outstrips availability. This creates a new source of frustration and introduces an unfortunate competitiveness between researchers to gain control of the machines. At the U.S. National Archives facility in Suitland, Maryland, access to copy machines was allotted in ten-minutes units, with a rule that a researcher could not have more than one ten-minute unit in any given hour if others wanted to use the machine. On the day I visited, the reading room was nearly full to capacity and approximately 20 to 30 researchers clamored for machine access. Under pressure to copy hundreds of pages, ten minutes is experientially very short. To claim my full ten minutes each hour, I three times had to request bureaucratic intervention to remove researchers who "poached" on my time. To further complicate matters, all materials to be copied had to be inspected and approved before copying could commence. I soon realized that it would be much more cost efficient (given travel costs and hotel rates in Washington, D.C.) to pay thirty cents per page to request the archive to copy the materials I wanted and mail the copies to me.

This, however, required filling out a detailed bureaucratic request identifying each of many items to be copied -- and a two-month wait for the copies to arrive.

39. ASA Didactic Seminar on Historical Sociology, 1988 ASA meetings, Atlanta, Georgia. Jill Quadagno's "how to use archives" presentation rarely strayed from the obvious and focused narrowly on the use of archives maintained by the U.S. National Archives and Records Administration. The archival resources typically most useful to intellectual history and history of sociology (such as manuscript collections) fell well outside Quadagno's emphasis and interpretation of "historical sociology."

40. A considerably revised version, re-titled Nonreactive Measures in the Social Sciences (Webb, Campbell, Schwartz Sechrest, and Grove (1981), lacks the originality and spontaneity of the earlier edition.

41. Goffman did not acknowledge a debt to Max Weber, but the parallel is clear. In his Harvard University lectures in the 1940s on the sociology of law, Roscoe Pound explained the difference thus:

[Weber] held that sociology treated of activities oriented to the activities of others and treated social activity from the standpoint of its meaning. Hence he held it a science of understanding differing from the natural sciences, which have nothing to do with the meaning or motive of events. An act is an expression of the will manifested externally. An event is something which happens without the intervention of a will. Thus, if I throw something off the roof of my house that is an act. If the wind blows off a slate that is an event. (Roscoe Pound, manuscript lecture notes on "Sociology of Law," Box 83, Folder 5, Roscoe Pound Papers, Harvard Law School Library).

42. This is a frame joke. Posing this question here pushes the limits of "making a joke." Goffman (1974: 35) put it thus:

Individuals can rather fully constitute what they see in accordance with the framework that officially applies. But there is a limit to this capacity.

Goffman's (1974: 1-20) own frame "joke" is found in his introduction, where he engages in a nine-deep layered commentary on a commentary on a commentary, etc., ending with the all encompassing one-line commentary: "This is what frame analysis is about."

43. Guards at U.S. Government archives are armed and can be presumed to take a "no nonsense" attitude toward perceived destructive behavior or theft. I learned during my visit to the Manuscripts Division at the Library of Congress that a prior patron had been apprehended for theft and that FBI agents were in the building that day interviewing staff members.

44. If time permits, "fishing trips" can locate significant data previously unearthed by other researchers. The Paul Sayre Papers are a good example of an uncataloged collection that contained many useful items. Similarly, the John H. Wigmore Papers, also uncataloged, were usefully consulted with the assistance of a helpful associate archivist, Kevin Leonard. My visit to the National Archives to examine the files of the National Commission on Law Observance and Enforcement was a calculated gamble. The collection is very large and has a rudimentary finding guide. Fortunately, the archivist, James Cassedy, made a preliminary exploration before I arrived, narrowing the search to several boxes which did yield considerable data.

45. With reference to this project, the Nathan Roscoe Pound Collection in the State Archives, Nebraska State Historical Society, is a good example. The probability of relevance was very high. David Wigdor noted its utility for his project and archivists at other archives recommended the collection. The finding guide is adequate but not detailed. Given my residence in Lincoln, however, there was ample time to go completely through the collection.

46. The E.A. Ross Papers, Richard T. Ely Papers, and Charles Bessey Papers are good examples of this type. These collections are very large and contain much material not relevant to the project, but the excellent finding guides made using the collections very straightforward and productive. The Roscoe Pound Papers at the Harvard Law School Library represent the best of both worlds. Not only is the collection large, but much of it is relevant and was recommended by David Wigdor and archivists from four archives. The finding guide is detailed and allows the researcher to pinpoint correspondence pertaining to specific sociologists. I could spend only one week at Harvard, but

it was productive due in large part to the help of the manuscript associate, Mrs. Judith Mellins, who mapped out a search strategy prior to my arrival.

Materials in archives are typically unique and cannot be substituted. This is a major structural difference between research based on published works (which can be obtained in multiple copies at most research libraries, if not from specialty used book dealers) and research based on archival material (which is rare, unique, and typically irreplaceable).

47. Ross to his mother, 15 December 1899, Box 2, Folder 2, Edward A. Ross Papers, State Historical Society of Wisconsin. He wrote:

The University has entered upon good times now . . . . Moreover my department is at last getting a show . . . . In consequence I am now entirely exempt from the mere drudgery of teaching. For instance I haven't looked over an examination paper this fall. Everything that I can I turn over to competent assistants and so my energies are left free for lecturing and writing and planning and organizing the work of the students and keeping in touch with the needs of the state. For the first time since I have been in the University I have been able to do my work without a feeling of hurry. In consequence of this I am doing a lot on my book [Social Control] and hope to finish it this year.

48. Pound to Hershey, 14 August 1892, Paul Sayre Papers, University Archive, University of Iowa, Iowa City.

49. Instructively, Goffman (1974: 19) wrote:

And if above I had said: "What about the \* \* \* \* \* which divide up and divide off . . ."; would this be a proper use of print, and can an easy rule be formulated? Given the motivational relevances of orthographers, a book on orthography can properly use a batch of print to illustrate print, to the neglect of saying something with its meaning. Similarly, a geography book can properly switch from words to maps. But when a mystery writer has his hero find a coded message on a torn bit of paper and then

shows the clue to the reader by inseting it in the center of the page as though it were a map in a geography book, so that the reader sees the tear as well as the message, what sort of shift to a nonfictional frame has the writer asked the reader to make, and was he quite within his rights to ask it? Is it overly cute for an anthropologist reporting on the role of metaphor (with special reference to animal sources) to write, "One always feels a bit sheepish, of course, about bringing the metaphor concept into the social sciences and perhaps that is because one always feels there is something soft and wooly about it"? Similarly, if I try to get dodgy with prefaces, is this not different from writing about tricks done with prefaces (which characteristically need not be undertaken at the beginning of a study)? Is this not the difference between doing and writing about the doing? And in considering all of these matters, can I properly draw on my own text ("And if above I had said: 'What about the \* \* \* \* \* that divide up and divide off . . .'; would this be . . .") as an illustration? And in this last sentence has not all need to be hesitant about the right to use actual asterisks disappeared, for after all, a doubtful usage cited as an example of doubtful usage ceases to be something that is doubtful to print?

### CHAPTER THREE

#### AMERICAN PLANT ECOLOGY AND THE QUADRAT<sup>1</sup>

Sociology is the ecology of a particular species of animal, and has in consequence, a similar close connection with plant ecology.

-- Frederic E. Clements<sup>2</sup>

#### Introduction

Roscoe Pound's intellectual and academic interests were solidly interdisciplinary from the earliest years of his graduate training. Between 1888 to 1897, Pound earned the M.A. and Ph.D. degrees in botany at the University of Nebraska. Simultaneously, he took a year of training at Harvard University Law School in 1889-1890, chose Roman Law to fulfill the requirement for a doctoral minor at Nebraska, practiced law in his father's Lincoln law firm, and pursued independent legal studies on his own.<sup>3</sup>

The keystone of Pound's botanical work was his joint authorship with Frederic Clements of The Phytogeography of Nebraska in 1897, with a first published edition in 1898, and a second edition (occasioned by loss of the first edition stock) in 1900. Both Pound and Clements earned doctorates on the basis of this work. Tobey (1981) credits the insights in the Phytogeography with launching the American school of plant ecology that subsequently blossomed at the University of Nebraska. Key elements contributing to the importance of the the Phytogeography were methodical fieldwork, precise use of the quadrat as a methodological tool, refined regionalization procedures, and Pound's genius for organization and cooperative study.

Pound's interdisciplinary openness and interest in botany continued after his appointment in 1899 by the University of Nebraska as Assistant Professor of Jurisprudence to give instruction in the Law College and the Department of American History and Jurisprudence.<sup>4</sup> He participated in the Seminarium Botanicum, a student group he founded as an undergraduate years earlier. In 1903, Pound was named Dean of the College of Law at the University of Nebraska. Toward the end of Pound's Nebraska years (1870-1907), his interdisciplinary scope expanded to include sociology, largely as a result of discussions between Pound



and the noted sociologist, Edward A. Ross, a faculty member at Nebraska from 1901 to 1906 (Chapter 4).

The intellectual currents during Pound's Nebraska period are complex, and integrally involve Pound's mastery of three seemingly disparate disciplines: botany, law, and sociology. This chapter focuses on the early ecological thread in Pound's work to the point where the botanical baton was passed to his colleague, Frederic E. Clements. Clements continued in botany and became a recognized leader in American ecology.

Significantly, the sociological impetus that Ross gave to Pound also reached into Clement's work in ecology and vice versa. In the 1920s, Clements' ideas influenced the Chicago ecological studies sponsored by Robert Park and Ernest Burgess. During the 1930s, Clements' ecological work opened to include public policy and human communities as well as botanical life (Clements 1935a, 1938; Clements and Chaney 1936). And in 1929-1931, Pound's astute ecological insight surfaced again during his oversight (on the National Commission of Law Observance and Enforcement) of Clifford Shaw and Henry McKay's ecological studies of delinquency in Chicago (Chapter 7).

### Preface to Botany

Pound's early intellectual life unfolded in a unique institutional milieu in Nebraska. During the last quarter of the nineteenth century, Nebraska was a frontier community. Deegan (1988a) points out that Nebraska was a new state, Lincoln was a new capital, and the University of Nebraska was a new school. Institutional and organizational precedents were at a minimum, there was freedom to innovate, and Pound created his own intellectual organizations (i.e., the Seminarium Botanicum and the Botanical Survey of Nebraska). Without prohibitions to the contrary, Pound and Clements wrote a joint, co-authored doctoral dissertation. Pound was a young student who pursued new ecological questions in a new department of botany. He was also the son of white, educated, middle class parents.

Pound's early delight in collecting botanical specimens surfaced early and is reasonably traced to similar interests on the part of his mother, Laura Biddlecome Pound. Roscoe Pound later wrote that "mother had started me in botany." Laura Biddlecome took formal training at Lombard College, a Universalist college in Galesburg, Illinois. She attended for one year (1859-1860) in what "was one of the very earliest colleges to admit women" and she journeyed from New York "to what was then a frontier town to attend." The faculty approved her ambitious plan to graduate after two

years of concentrated study, but "the approaching Civil War caused her parents to think it unwise for her to return to Galesburg" (Sayre 1948: 21). Wigdor (1974: 11) suggests that at Lombard she may have "first developed an interest in botany." This interest flowered when she came to Nebraska shortly after her marriage in 1869 to Stephen B. Pound, a Lincoln merchant, lawyer, and later judge. At her death, the Lincoln Star reported:

Mrs. Pound became interested in the abundant wild plant life of Nebraska's prairies, and determined to know more about it. She submitted various specimens of wild western plants to Asa Gray, a foremost botanist of the time, who classified them for the first time.<sup>5</sup>

Her son's fascination with plants and botanical classification took a serious turn during his undergraduate years at the University of Nebraska.

As an undergraduate, Pound was in stellar company. His botany professor was the noted Charles E. Bessey. George E. Howard, later president of the American Sociological Society, was a prominent member of the faculty and a friend of the Pound family.<sup>6</sup> Amos G. Warner, from Roca, Nebraska, was a student two years ahead of Pound. Warner (1894) later wrote the landmark American Charities (Ross 1900; Howard 1908). Alvin Saunders Johnson, from northeastern Nebraska, was two years behind. Johnson would later be a colleague to

Pound, help found the New School for Social Research, and coedit the Encyclopaedia of the Social Sciences (Chapters 4, 5, and 9). When Pound earned his bachelor's degree in 1888 from the University of Nebraska, he leaned heavily toward botany. The following academic year, 1888-1889, Pound devoted himself to botany, earning a master's degree.

#### The Seminarium Botanicum, 1888-1889

Pound's master's thesis was researched and written during the 1888-1889 academic year.<sup>7</sup> The thesis and the circumstances of its production demonstrate Pound's ability (a) to pursue independent research, (b) to organize and work with fellow students in a productive circle of supportive colleagues, and (c) to tackle a topic that challenged the wisdom of an established practice in botanical classification and nomenclature (much as Pound the lawyer later sociologically challenged the received traditions of the American Bar Association).

Charles E. Bessey, professor and chair of the Botany Department, was acting chancellor of the University of Nebraska during the 1888-1898 academic year and was absent "a larger portion of the time" from the activities of the botany students.<sup>8</sup> To compensate for his absence, the student botanical club stepped up its activities.<sup>9</sup> This student club was called the Seminarium Botanicum (also known

by its English name: "the Botanical Seminar," the club was designated popularly as "the Sem. Bot.").

Pound organized this student group during the final two years of his undergraduate work, 1886-1888. He was elected the leader of the Sem. Bot. for the year 1888-1889 when the club took the step of formal organization. The leader was called the "Lord Warden" because he possessed a set of keys to the laboratory. Pound also held his first academic appointment during this year, an assistantship in the Botanical Laboratory.<sup>10</sup>

Under Pound's leadership, the seven resident members (or "Sems.") of the Sem. Bot. established the following plan of work:

Regular convocations were held this year in the Herbarium with closed doors each Thursday at five P.M. Special convocations were held frequently. The plan of work was: The M.R. kept a list in the following order; A.F. Woods Sem., Roscoe Pound Sem., T.H. Marsland Sem., J.G. Smith Sem., L. H. Stoughton Sem., H.J. Webber Sem., T.A. Williams Sem. Each Sem. announced the subject upon which he intended to write six weeks in advance, and at each convocation the M.R. reminded the Sems. of the subjects announced for the succeeding six weeks. Each Sem. read his paper at the convocation designated, occupying about one hour, after which a general discussion was held. But one paper was read at each meeting, and papers were read in the order indicated by the list kept by the M.R.<sup>11</sup>

"M.R." (Master of the Rolls) was the group's playful designation for the club secretary. Originally all undergraduates when the group first came together, the Sem. Bot. now comprised a mixture of graduate and advanced undergraduate students, all male. Smith and Pound pursued graduate studies. Webber and Williams were seniors who, as special students in botany, wrote undergraduate theses for the bachelor's degree. Woods, Marsland, and Stoughton were junior students in botany.<sup>12</sup> Each meeting was clearly in the spirit of geographer Carl Sauer's (1948) useful definition of a "seminar" as:

a frequent (e.g., weekly), leisurely (e.g., evening-long) prepared conference on research done, doing, or projected, in which students and faculty participate, ideally because they are interested in getting at each other's information and views.

In this case, however, it was the students -- not the faculty -- who took the vigorous intellectual lead.

After its formation by the original seven students, subsequent admission to the Sem. Bot. involved elaborate initiation rituals and the passing of written and oral examinations administered by fellow students who were already members. Frederic Clements, for example, was inducted in 1892.<sup>13</sup> Among the oral examination questions put to Clements by Pound was the following: "Discuss the

theories as to the variations or constancy of species before Darwin, and their relation to the doctrine of evolution."<sup>14</sup> By such careful screening, the members of the Sem. Bot. maintained the intellectual integrity of their club.

The Sem. Bot met typically in closed sessions from which outsiders were barred, thus exhibiting characteristics of secret societies (Simmel 1906; Webster 1908) such as the Masons that Pound later joined (Chapter 9). Pound devised elaborate rituals and tongue-in-cheek symbolism for the Sem. Bot., including a Latin motto and hand-drawn coat-of-arms for each new member.<sup>15</sup> Pound also designed Sem. Bot. regalia which early featured a distinctive tasseled hat (see Figure 2.1). Playful ritual was by no means the central feature of the Sem. Bot. It was at heart an organization for hard scholarly work and intellectual discovery.

The closed door sessions during 1888-1889 were models of vigorous scholarly debate. The group was guided by the principle that "full, free and thorough discussion" should characterize their meetings and symposia.<sup>16</sup> According to one account, "Each in turn read a paper and was cross-examined and torn to pieces by the others."<sup>17</sup> The six-week advance notice for the reading of each paper allowed the presenter sufficient time for preparation, and "enabled the others to read up and to make him give a good account of himself when his turn came."<sup>18</sup> In sum, this was



Figure 3.1. The Sem. Bot. in 1891.

[Left to right: Woods, Roscoe Pound, Marsland]

Source: Records of the Botanical Seminar, University of Nebraska Archives.



a year of solid academic accomplishment achieved by five undergraduates and two first-year graduate students working together without close professorial supervision.

Pound's formal contributions to the Sem. Bot. were papers on mycology, specifically: "The Extent and Position of the Slime Moulds," "The Yeast Plants," "History of the Classification of Fungi," and "The Origin and Relationships of the Carpophytic Fungi."<sup>19</sup> The other students presented on a variety of topics and a number of papers (especially those by T.A. Williams -- who studied lichens), were on topics related to Pound's. In all, twenty-two formal papers were prepared and Williams' paper on the "algo-lichen hypothesis" was afterwards published.<sup>20</sup> T.A. Williams' (1889) piece became the lead article in the January issue of the American Naturalist.

Whereas Williams' paper was specifically noted in the Record of the Sem. Bot., Pound's publications were not. Compiling the historical record of the Sem. Bot. was a task assigned to Pound in 1892. Thus, the existing record of at least the first six years of the Sem. Bot. (1886-1892) is a recasting of notes, programs, memory, and other materials in journal form. The handwriting in the journal almost certainly belongs to Pound. Perhaps an uncharacteristic attack of modesty accounts for Pound's omitting mention of

his own research notes published in 1889 in the American Naturalist.

Pound's published articles and notes (Pound, 1889a, 1889b, 1889c, 1889d, 1889e, 1889f) illustrate his well-developed interest in the fungi and the linguistic intricacies of taxonomy and botanical nomenclature. Four members of the 1888-1889 Sem. Bot., Smith, Webber, Williams, and Pound, contributed several additional articles, reviews, and research notes to the American Naturalist in subsequent years. This high level of productive publication by young scholars was no doubt encouraged and fostered by Professor Bessey who was at that time botanical editor of the American Naturalist and could use that forum to place his students' work before the larger scientific community.

In addition to formal paper sessions, the Sem. Bot. members engaged in "special convocations," "forays," "rushes," and high jinks of a more playful character,<sup>21</sup> although these too could be marked by studious intent and serious discussion. For example:

On April 25th [1889] the first annual Foray was held, the Sems walking to Saltillo and back [a distance of several miles]. A convocation was held at Saltillo. L.H. Stoughton Sem. read a paper, T.A. Williams Sem. discussed the Lichens and H.J. Webber Sem. and Roscoe Pound Sem. the Fungi collected.<sup>22</sup>

An example of more frivolous doings is provided by A.F. Woods who, during the years 1886-1889, worked closely with Pound.<sup>23</sup> He recalled:

Our discussions outside the seminar ranged over a wide field including prohibition. About that time the great question was whether we should have legal prohibition or control through high taxation. We were all agreed on the latter except H.J. Webber who was a strong and vociferous advocate of prohibition by law. One afternoon Webber brought in a fine large watermelon, put it in the sink and let a stream of water run over it to cool it. He would not tell us what he was going to do with it. He said that it would take an hour or so to cool. He had to leave the laboratory for about an hour. Pound came in and spotted the melon, then left suddenly and returned in about 10 minutes. He had secured a bottle of Claret and he and I injected as much of it as we could into the melon, then waited for Webber to return. It was not long -- and he invited Dr. Bessey and Pound and myself to help him eat the melon. It was very juicy. Webber smacked it down with great avidity. "By gum" he said, "We must save these seeds, every one of them, that is the best melon I ever ate." We had to exhibit the Claret bottle to convince Webber that wine had something to do with the quality of his melon. But he still voted the prohibition ticket.<sup>24</sup>

During the research and writing of his M.A. thesis, Pound was surrounded by a small group of energetic, unsupervised, fun-loving, and mutually supportive scholar colleagues who regularly discussed botanical ideas among themselves and published their findings in a national journal under Charles Bessey's auspices. Pound, as Sem. Bot. historian, reflected

that this "was the most prosperous year of the Sem. Bot. The greatest enthusiasm was manifested by all."<sup>25</sup>

### Roscoe Pound's Master's Thesis

The graduate thesis that emerged from this scholarly and collegial association is now lost. There are a number of reasons why it cannot be found. Procedures governing graduate examinations and course work, the preparation of theses, and the granting of advanced degrees were not yet firmly fixed as they are today at the University of Nebraska. As late as 1931, there was still considerable variation among U.S. universities regarding the requirements for the master's degree (Cable 1932). At Nebraska, there was apparently no provision for depositing master's theses in the university library. Graduate training was not recorded on university transcripts during this era. It is probable that Pound's thesis manuscript was not, in fact, labeled specifically as a thesis. In response to an inquiry from Bessey in 1908, nearly two decades after the thesis was written, Pound concluded, "The MS you found is undoubtedly my thesis for the Master's Degree," a reference suggesting that Bessey did not recognize it as such, or at least wanted confirmation of its status.<sup>26</sup> The ultimate fate of the thesis is unknown, although Pound suggested that Bessey

could loan it to someone who might make use of it in writing a monograph on the Imperfect flora in Nebraska.<sup>27</sup>

The thesis was titled: "The Imperfect Fungi of Nebraska."<sup>28</sup> The content and intellectual thrust of the work is revealed in Pound's subsequent 1908 reflection on his early research:

The ideas of classification in it are possibly too radical. I wanted to arrange the Imperfect so that there would be no such group, but the several form genera should be relegated to appendices to the perfect groups with which they are connected. This was no doubt too ambitious.<sup>29</sup>

Pound attempted nothing less than to re-order standard practice in botanical nomenclature and classification. The audacious character of Pound's early thesis project is revealed in part by noting that the general field of taxonomic problems he addressed was still sufficient fodder for an international taxonomic conference on the Imperfect fungi eighty years later (Kendrick 1971). Despite Pound's latter-day reflexive observation that his work was "too radical," Bessey saw sufficient merit and recommended Pound for the master's degree. Pound apparently received notice of the recommendation and thanked Bessey for it while Pound was in Cambridge during his first semester of law study at

Harvard in the autumn of 1889.<sup>30</sup> The degree was officially awarded in 1889.<sup>31</sup>

The Seminarium Botanicum drew its strength from the daily, face-to-face interaction of young scientists who cared deeply about their studies. Working without Professor Bessey's close supervision, Pound led his fellow students in a productive and exciting, year-long, unofficial seminar during the 1888-1889 academic year. Here, Pound laid the foundation for a lifetime pattern of independent thought and research coupled with and enhanced by organizational skills of considerable magnitude.

#### Pound's Doctoral Studies in Plant Ecology

Following his M.A., Pound planned to attend Harvard University and study under Asa Gray, Charles Bessey's former mentor. As fate would have it, Gray died the year before Pound left for Cambridge. Pound changed his objectives accordingly, deciding to emphasize law instead.

He found the Harvard Law School much to his liking and concentrated his efforts on an intense year of legal studies. He wrote to his father in December 1889:

It is very difficult to get a good mark here -- but the easiest thing in the world to get a passing one. It is easy enough to get a general idea about law from the lectures -- but if one wants to know anything he must work very hard; and I must say that when a man has gone through

the course here and worked up everything he is told to he ought to be well prepared on almost every branch of law. I never could have managed to learn at home in two years what I have here already.<sup>33</sup>

Having saved enough money to pay for only one year at Harvard, Pound returned to Lincoln where he entered his father's law firm as an apprentice.

While learning the law first hand in Nebraska, Pound also worked part-time on his doctoral studies in botany. Pound was no doubt happy to continue under Bessey, as his estimate of Harvard's botany program was not altogether favorable. He wrote to Bessey the previous year from Cambridge:

There is a great deal of Pharisee about the botanists here; and even Mr. Seymour who is from the west and ought to know better is inclined to pooh pooh the botanical knowledge of the rest of the world. They certainly do very fine botanical work here; being especially inclined to ape the English botanists. They talk very funnily about German botanists . . . . But it is the few that do all this. The great majority of the students who go through here don't get the equivalent of what in my time was "Soph Botany" unless they take special work. Undergraduates do a very small part of the botanical work here. In that respect at least the U. of N. need not be ashamed of its botanical work.<sup>33</sup>

Indeed, Nebraska would soon become very proud of Pound's work, work that contributed to the inaugural issues of the

Botanical Seminar's (1892, 1893, 1894, 1896, 1901) Botanical Survey of Nebraska, and culminated in the highly regarded Phytogeography of Nebraska.

Botanical Expedition to the Sand Hills, 1892

In addition to numerous shorter trips, Pound made a one-month botanical expedition deep into the Nebraska Sand Hills region with Jerad Smith, a fellow member of the Sem. Bot., in July and early August 1892. These and other collecting trips made during the next five years formed the empirical basis of Pound's advanced work in the Phytogeography. Much of the 1892 Sand Hills trip was made on foot, including the return to Lincoln.

Pound and Smith took the train to Alliance, Nebraska, and set out behind a horse cart loaded with gear.

We began at Alliance, walked across Sheridan County and through Cherry County to Dad's Lake, then swung up through Rock County to Johnstown, went from there to Neligh.<sup>34</sup>

Unable to sell their horse at a fair price at the end of their journey, they chose to walk back rather than take the train. From Neligh they made their way to Albion, Columbus, David City, and Lincoln. All told, the two students walked several hundred miles, collecting specimens all the way. The details of this remarkable trip are found in a series of



letters that Pound wrote to his friend Omer Hershey and are reproduced here in Appendix C.

In 1892, the Sandhills of western Nebraska were barely settled. There were no roads and few post offices. Clements later observed, "anyone who has trudged over the dunes of Lake Michigan or those at Cape Cod or Cape Henry will readily appreciate the physical exertion and endurance demanded by this trip."<sup>5</sup> For sociologists, Mari Sandoz' (1935) biographical/autobiographical Old Jules is a remarkable introduction to the social world of the Sand Hills from 1884 to 1928. For detailed analyses in the historical social geography of the Sand Hills, the work of C. Barron McIntosh (1974, 1975, 1976, 1981, 1988) is unparalleled. Botanically speaking, the Sand Hills were largely unexplored in 1892. Pound and Smith collected previously unknown species, classified them, and recorded their geographic locations (and Pound was called upon to recall the data from his photographic memory when the data notebooks were accidentally lost!). The scientific outcome of the expedition was reported in Smith and Pound (1893). This trip was the longest and most difficult that Pound undertook, and it underscores Pound's commitment to empirical scientific investigation in the field. Like all good geographers, Pound got his boots muddy.

### The Botanical Survey of Nebraska

Shortly after his return from the Sand Hills, Pound organized the Botanical Survey of Nebraska -- with himself as Director. The Survey became an official mechanism, with University affiliation, to designate Pound's plan for the systematic botanical exploration of Nebraska. The Survey had no money and no staff, only the imagination of Pound and the Sem. Bot. members who contributed to the project and its several publications (Botanical Seminar 1892, 1893, 1894, 1896, 1901). The Sem. Bot collected no dues for its projects, and thus "the increasing costs, especially of publication, were met by Pound for nearly twenty years, until the University was finally able to take them over."<sup>36</sup> The Survey was a creative experiment in fictional bureaucracy which helped institutionalize and coordinate the studies of the young botanists at the University of Nebraska.

### Career Decisions

Organizing the Botanical Survey signaled Pound's intent to stay put in Lincoln and undertake serious study of botany and law. This decision was not easy for Pound, but it was resolved during the summer of 1892. He paused then to evaluate his current situation and future potential. Just

prior to the Sand Hills expedition, Pound wrote to his friend Hershey:

I am mightily tempted to throw prudence and everything else to the dogs or winds . . . . It would probably be ruin for a while -- I haven't a cent of course above R.R. fare etc., having invested everything [in] books etc. . . . The fact is I shall never forgive myself for not going to Harvard last year. It was the mistake of my life as you then prophesied. I never told you what really kept me back or how near I was to going? The real fact is I hadn't the sand to face the everlasting row with my parents which my cutting loose would mean. They are built like me -- or I like them rather -- and don't give in for anything. If I cut loose, why I've got to do it with a vengeance and it means trouble which I haven't the nerve to face.<sup>37</sup>

Following his month in the sandhills, however, the possibility of his leaving Lincoln came up in conversation with his father. Pound was shocked to learn how strongly his father felt. Pound wrote, "I was wholly unprepared to find him so set on my staying with him." Pound, then 22 years of age, took this as a mandate to stay put. To his friend Hershey, he confided:

I don't know what a year or so may bring forth. I ought to be a fair lawyer by the time I'm 25. Perhaps this is as good a place as any to study -- for after all that is what I shall do for the most part.<sup>38</sup>

With neither removal nor Harvard in his immediate plans, Pound set to work, learning the law, studying botany, and directing the Botanical Survey of Nebraska.

### The Phytogeography of Nebraska

Pound and Clements jointly wrote a landmark in American plant ecology, The Phytogeography of Nebraska. Raymond Pool, professor and chair of the University of Nebraska Department of Botany wrote about the import of the Phytogeography in 1946:

This was the first noteworthy and truly scientific treatise on the subject of plant geography in America and at once it attracted the attention of botanists throughout the world -- it is still frequently noted in bibliographies on the subject in many countries. It was a masterpiece and it served to establish Nebraska as an internationally known leader in that field, a reputation which the department holds to this day.<sup>39</sup>

Recognition was not confined to Nebraska professors of botany, however. In June, 1898, Pound was elected to membership in Sigma Xi, the Scientific Research Society.<sup>40</sup> The following year, in 1899, The Botanical Gazette reported:

The international scientific medal of the Academie Internationale de Geographie Botanique has been conferred upon Dr. Roscoe Pound of Lincoln, Nebraska, for his phytogeographical researches. (Setaro, 1942: 126).

In retrospect, Clements concluded in 1945, just before his death, that the Phytogeography was a significant work:

It is perhaps not too much to say that out of the latter developed a synthesis of the new field of dynamic ecology, which has since spread over the globe and has exerted a profound effect upon agriculture and forestry, and upon conservation in particular.<sup>41</sup>

As a doctoral thesis, the Phytogeography was self-published with printing costs paid by the authors themselves. Evidently the intellectual reception of books at the turn of the century hinged more on merit than on who published them. Pound and Clements wrote a widely praised and innovative treatise while whistling opera and sneaking into the botany labs at night.

The manuscript was begun in the autumn of 1896. Clements described the working relationship during the writing of the joint dissertation:

The two friends [Pound and Clements] alternated in the major tasks of dictating and transcribing, pausing now and then to discuss a point, seek new inspiration, or to relax by whistling in unison snatches from favorite grand operas. At such times, Dr. Bessey would occasionally look in, to say that he knew the work was going well when the strains floated down the corridor.<sup>42</sup>

The writing was done at the Herbarium at the University during the evenings over a period of six months.<sup>43</sup>

The nocturnal writing schedule necessitated surreptitious entry to the botany labs, as Clements recalled:

An antiquated regulation to the effect that University buildings were not open in the evening for individual workers below the rank of professor made it necessary to enter and leave by means of a high window, the latch of which was carefully checked every afternoon. Dr. Bessey and the night watchman were both fully aware of the arrangement, and this patent subterfuge finally led to dropping the rule, but too late in the year to be of service.<sup>44</sup>

The result of their nightly writing was intended from the first to serve as a joint thesis for the doctor's degree.

The Phytogeography of Nebraska demonstrates Pound's thorough empirical grounding in scientific research and keen sensitivity to theoretical issues in plant ecology. Pound and Clements conceptualized ecology as a study of dynamic processes, with resulting plant distributions as patterns to be explained rather than studied as ends in themselves. The Phytogeography inaugurated quantitative quadrat studies in botany and used the results to ask dynamic questions and refine the regionalization of prairie plant associations.

The preface to the first edition documents the collaborative nature of the work and the lengthy period of data collection and analysis that preceded the actual writing of the Phytogeography:

This work is the result of nearly five years of active study of the floral covering of Nebraska, carried on by the members of the Botanical Seminar in the Botanical Survey of the State. (Pound and Clements 1900: 3).

Pound and Clements (1898a: 4) paid homage to Oscar Drude, a German botanist, noting, "it goes without saying that the writings of the German phytogeographers which have appeared in recent years have been a chief source of inspiration." Importantly, however, they were not slaves to Drude's methods:

We have departed from his methods with reluctance, and only in cases where the peculiar circumstances of our region appeared to make it imperative. (Pound and Clements 1900: 4).

Tobey (1981) points out that departures from Drude's impressionistic approach to plant geography were everywhere necessary because Nebraska's prairie ecology differed radically from that typical in Europe. Interestingly, Pound and Clements closed their preface by discussing the nomenclature conventions used in the Phytogeography. Interesting, because they cited Lester F. Ward, then a botanist, who later as a sociologist was a major source of insight for Pound in his studies of sociology.

The introduction to the Phytogeography sets forth the definition of the field of research and describes the dynamic processes that Pound and Clements studied:

Within a few years phytogeography has become a distinct department of botanical knowledge. The development of this branch of the science has been effected chiefly by the efforts of a few continental botanists. It is true that many earlier botanists contributed largely to this result, principally in the direction of geographical and distributional data. But their work was of necessity elementary in character, and the facts they worked out were miscellaneous and undigested. Geographical botany, as then understood, was concerned almost solely with the cataloguing of species and with distributional problems. The essential relation of habitat and organism was fully perceived more recently. The fuller perception of this relation and its consequences has established phytogeography as it is now understood. (Pound and Clements 1900: 13).

They noted that:

In its more immediate aspects, phytogeography portrays the floral covering of a region, and in so doing sets forth the connection between geography and botany, which has given it form in the past. But ultimately it is concerned with the interrelations of the organic elements of this floral covering. It determines the place and the role of these elements, and seeks to discover the ultimate causes underlying phytobiological activities. It deals with the aggregate of the causes and forces which the vegetation of a region expresses. (Pound and Clements 1900: 13-14).



Pound and Clements saw their study as the combined result of interrelated projects in botany:

The conception of the vegetative covering must be reached through the conceptions of the species on the one hand and of the individual plant upon the other hand. Sound taxonomy is a prerequisite of floristic and distributional investigation, and hence of one aspect of Phytogeography. Morphology is the foundation of another side and Ecology of still another, and perhaps the most important. The first deals with species, the last two deal with individuals. By bringing all to bear, we may understand vegetation. (Pound and Clements 1900: 14).

Note here that taxonomy was deemed a prerequisite to exploration of the relationships between species and individual. Pound's characteristic expository style, in which all discussion begins with a classification of the phenomena under study, is rooted in his conception of ecological study. Having categorized the world, one then examines relations within it.

Relationships among plants can be conceptualized in various ways. Thus, they wrote:

In consequence of the many-sidedness of the subject, the phytogeographer should not restrict himself to one standpoint. Now one must be taken, and one phase of the subject accentuated, and now another. (Pound and Clements 1900: 16).

The Phytogeography was especially successful due to Pound and Clements' specific attention to the empirical basis for regionalization and the precise use of the quadrat. These closely interrelated issues were applied in the Phytogeography but discussed elsewhere in greater detail in two articles published in 1898.

The Quadrat. The quadrat has a long history in botanical study (Clements 1916: 424-425; Tobey 1981: 48-70). But, "in 1897, Roscoe Pound and Frederic Clements took a daring leap into numerical quantification of ecology" based on new, precise methods that gave the quadrat radical importance to ecology (Tobey 1981: 48). Tobey (1981: 48) asserts:

Pound and Clements had to deny the fundamental assumptions of traditional quantitative floristics, reformulate plant geography on a new conceptual base, and devise a new methodology for field investigation. In so doing, they tore ecology away from its past and thrust it into the twentieth century.

Specifically, they shifted ecology from an impressionistic to a quantitative basis. Previous phytogeographers estimated rather than counted the number of individual plants in standardized areal units. Pound and Clements found this unworkable in prairie regions because visual

estimates underrepresented plant species with small physical stature. Pound (1954: 113) recalled "how we worked out together by trial and error in the field the 'quadrat method.'" The two graduate students hit on the idea of delimiting small quadrats and then making a complete census of all plants within their bounds.

Pound and Clements (1898b) published their technique in an article titled, "A Method of Determining the Abundance of Secondary Species." They describe using:

plots five meters square in characteristic formations of each of the four phytogeographical regions represented in Nebraska. The plot used, five meters square, is as large as can be used to insure accuracy in counting. The deficiencies resulting from the small size of the plots are corrected by taking a large number of plots at each station and averaging the results. There is surprisingly close agreement in figures obtained from plots in widely separated stations in the same district provided reasonable care is taken to locate them in typical situations. (Pound and Clements 1898b: 20).

This approach allowed Pound and Clements to determine quantitative relations among species, and then to assess changes in these relations from place to place, for example:

The constant diminution in the number and abundance of secondary species as one passes from the prairie grass formation of the prairie region to the buffalo grass and bunch grass formation of the transition area and of the sand hill region is well illustrated. (Pound and Clements 1898b: 22).

The quantitative relationships that Pound and Clements established (based on what became known generally as "the quadrat method") generated a set of interrelated ecological questions that Clements and his students pursued for the next several decades.

Several field techniques sprang from the logic of their approach to the quadrat. Wrote Clements (1905: 162):

The quadrat constitutes the initial concept from which all the methods have grown. In itself, it has given rise to a variety of quadrats applicable to the most fundamental problems of vegetation. From it have come, on the one hand, the migration circle, and on the other, the transect. The latter in turn has yielded the ecotone chart, and the layer chart. All of these are based upon direct and detailed contact with vegetation itself, and permit accurate recording of all the results obtained.

In his Research Methods in Ecology, Clements (1905: 162-183) worked out a detailed methodological discussion of quadrats and their varied uses in quantitative plant ecology. Robert Stoddard (1982: 96-98) illustrates the continuing relevance of the quadrat to areal sampling in geography and the spatial sciences.<sup>45</sup>

Regionalization. Pound and Clements' ecological work took them directly into regionalization as a scientific problem. They asked, for example, where did one plant

association begin and another end. Based on their empirical work, they took this question to a grand, continental scale in a paper on "The Vegetation Regions of the Prairie Province" (Pound and Clements 1898c). Their map (Figure 3.2) delimits the prairie region and sub-regions within it. Regionalization is a classic and continuing task in geographic research (e.g., James and Jones 1954: 21-68; Hill 1973; Dickinson 1976; Haggett, Cliff, and Frey 1977: 450-490), human ecology (e.g., Shevky and Bell 1955; Abu-Lughod 1969), and ecological psychology (e.g., Lewin 1936: 87-165; Downs and Stea 1973). Pound and Clements' contribution takes its place in a venerable line of discussions on the boundaries of the Great Plains (e.g., Fenneman 1931: 1-4; Webb 1927: 10-46). Clements (1905: 187) outlined his ideas on continental mapping in his Research Methods in Ecology, where he maintained that cartographic methods "are the fundamental material of comparative phytogeography, and in all careful vegetational study their use is no longer optional but obligatory" (1905: 183).

In sum, Pound and Clements' invention of the quantitatively precise quadrat method and the synthesis of their field research into theoretically-framed regionalizations of prairie plant communities revolutionized the practice of plant geography. The Phytogeography of Nebraska set the stage for rapid development in the United States of



**Figure 3.2. The Prairie Province.**

[Legend: I, the prairie region; II, the sand hill region;  
III, the foothill region]

Source: Pound and Clements (1898c).

ecology as a systematic, dynamic, theoretical, and rigorously empirical scientific discipline. This work led to doctoral degrees for both Pound and Clements.

### The First Ph.D. in Botany

Roscoe Pound earned the first Ph.D. in botany at the University of Nebraska. In fact, his was only the second earned doctorate ever awarded by the University of Nebraska.<sup>46</sup> When Bessey thought Pound and Clements ready, he brought the matter to a campus faculty meeting in mid-May 1897 and requested appointment of "assistant examiners" to examine the two candidates for the doctor's degree. Assistant examiners for Pound's minor in Roman Law were also requested.<sup>47</sup> On May 31st, a "communication" from Bessey was read aloud at the campus faculty meeting "announcing the hour of examination of Mr. Pound and Mr. Clements for the Doctor's degree."<sup>48</sup>

The faculty had little experience with the mechanics of awarding doctorates and they worked out the bureaucratic wrinkles as they went along. Concern was voiced in a campus faculty meeting, for example, about procedures for the publication of the doctoral thesis. The Faculty minutes of June 5, 1897, record:

In response to an inquiry from the Dean of the Graduate School in regard to the printing of the

thesis by Mr. Pound and Mr. Clements, Professor Bessey stated that the proper security would be given for the printing of the thesis. Dean Edgren moved that the statement by Professor Bessey be considered sufficient to warrant a vote upon the candidacy of Mr. Pound. Carried.<sup>49</sup>

Award of the doctorate at that time hinged on a vote of the general faculty, not just the examining committee. Having settled the matter of thesis publication, the Faculty minutes record:

The result of the ballot declared fifteen votes cast for Mr. Pound, all favorable. He was therefore recommended by the Faculty to the Regents for the Doctor's degree.<sup>50</sup>

Professor Bessey also reported that Clements had been examined in his major subject and that "the candidate acquitted himself satisfactorily."<sup>51</sup> A snag developed at this point, and Clements was judged one course short of the requisite needed for his minor.

Pound's candidacy, however, moved to the final stage of bureaucratic approval. At the Board of Regents' meeting on June 8, 1897, the following was read:

At a meeting of the General Faculty of the University, held on June 8, the following resolution was adopted: Resolved, that the General Faculty of the University of Nebraska hereby recommends to the Board of Regents of said University, the following named person for the degree of Doctor of Philosophy: Roscoe Pound.<sup>52</sup>



Whereupon, it was moved and ordered that the degree be conferred as recommended. A year later, in 1898, Clements was approved for the doctorate by vote of the faculty. Nineteen ballots were cast, and he "received the requisite majority."<sup>53</sup>

The Ph.D. required a minor as well as a major. "Evidently," wrote Clements, "this provision was designed to prevent scientific students from becoming too highly specialized." Clements minored in Romance Languages.<sup>54</sup> When the June 1897 commencement neared, Clements was blocked from graduating because he lacked a course in his minor, a course that Clements maintained was not part of the original bargain. Pound was greatly disappointed because he looked forward to receiving his doctorate with Clements. His botanical partner recalled, "Pound was exasperated by all this and vowed if we could not take the degrees together, he would not go near Commencement."<sup>55</sup>

Clements, however, prevailed on Pound to attend the commencement exercises as spectators. Once there, Clements (speaking in the third person), recalled this story:

They stood leaning against the rail of the parquet circle as the candidates for degrees received their diplomas. Then Clements, who had been revolving arguments in his mind, said, "Yours is the first doctor's degree the University has granted. Everyone will be disappointed not to see you receive it. Won't you go?" After a brief protest, Pound marched

briskly down the aisle, crossed the traditional bridge over the orchestra pit and stood before the Chancellor.<sup>56</sup>

Pound's degree was in fact the second such to be awarded, but it was the first to be conferred in person, as the Nebraska State Journal reported on June 11, 1897:

For the first time in the history of the institution a candidate was called up to receive the degree of doctor of philosophy, representing three years of resident graduate work. This candidate was Roscoe Pound, A.B. '88, A.M. 89. He was applauded as he started to the stage and as he took his diploma.<sup>57</sup>

In addition to Clements' urging, perhaps Pound was moved to accept the degree by the ceremony and drama of the occasion, and perhaps too the words of the previous day's Phi Beta Kappa address rang in his ears: "Men of work are the men of letters and men of letters are men of work," asserted Edward Everett Hale, "I am here to speak to someone who is present" who is "conceiving, studying and writing for us what has never been written."<sup>58</sup> By hard work, Pound broke new ground in ecological botany, and in law and sociology he would also write "what has never been written."

### Pound's Withdrawal from Botany

By 1908, Pound had moved from Nebraska and was teaching law at Northwestern University. Yet, he took time during a visit that year to Lincoln to personally recite the lore of the Sem. Bot. to a new generation of scholars. Following this visit, Bessey wrote to Pound:

I have been feeling good ever since you were here over that address which you gave to the Botanical Seminar last week. It did us a world of good and I have heard many pleasant remarks about it from the young people who now constitute the Seminar. It does the young people good to hear from those who while not yet old were here many years ago. When you talked of things that occurred twenty years ago, to many of these that period of time is about as far back as the Revolutionary War or perhaps the Crusades. . . . It was very thoughtful of you to tell so many of the things that occurred in the early days.<sup>59</sup>

Pound's (1909a) last contribution to the Sem. Bot. was a pamphlet on historical landmarks in botany. Pound's student leadership and the legacy of the Sem. Bot. receded into history even though the Department of Botany at Nebraska remained a leading center of ecological research for years to come (Tobey, 1981: 9-23). Clements recalled:

Although the Seminar owed much to Dr. Bessey indirectly, its actual origin and the brilliance of its performance through two decades were due to Pound's insight and perspective, as well as to

his scientific cast of mind. This is attested by its course after he left the University, when it gradually lost momentum and finally ceased to exist.<sup>60</sup>

Without Pound's seemingly boundless energy, enthusiasm, and creativity, the student botany club continued but never again matched the outpouring of independent scientific accomplishment that took root during 1888-1889. The extraordinary, productive era of student-organized botanical research at Nebraska faded after April 22, 1899, the date of Pound's last mention in the handwritten records of the *Seminarium Botanicum*. Subsequent ecological work at Nebraska was lodged firmly within the purview and control of the bureaucratically-organized Department of Botany per se, not in independent student clubs like the Seminarium Botanicum.

#### Separate Paths for Pound and Clements

After Pound went to Northwestern University in 1907 and Clements accepted a post at the University of Minnesota that same year, they kept up only occasional correspondence. In December 1907, the Clements stayed with the Pounds in Chicago and attended the A.A.A.S. meetings.<sup>61</sup> Clements invited Pound to Minnesota in 1908 to speak at a Linee celebration organized by Clements. Pound wrote Bessey that

he was inclined to go because it "would not be a bad occasion for preaching on the subject of domination of ghosts of the great departed in all subjects."<sup>62</sup> Pound and Clements exchanged books and publications from time to time, and copies of Clements' later books reside in Pound's personal library. In 1924, Pound wrote to thank Clements for sending "the monograph and also the book on experimental pollination."<sup>63</sup>

Following Clements' death in 1945, Pound (1954: 113) recalled that Clements had a philosophical bent, and moved toward a biological philosophy:

I remember how he and I used to discuss Linnaeus' "Philosophia Botanica," a wholly unphilosophical book as we use the term philosophy today, and Spencer's "Principles of Biology" of which we had expected great things in the days when Comtian Spencerian positivism was almost a religion to scientists. Professor Bessey warned us that we would get nothing out of the book, but we read and discussed it only to find he was right.

Pound's contempt for positivism in social science became a later trademark. Of their going in different professional directions in 1907, Pound wrote "to my great regret our paths parted" (Pound 1954: 113).

### Bessey's Relationship with Pound

Charles Bessey the teacher adopted a laissez-faire approach to Roscoe Pound the student, leaving the self-motivated Pound to follow his own instincts, organize student colleagues, and thereby revolutionize plant geography. In Pound's mind, Bessey's teaching style was an ideal model. Pound wrote to Clements in 1924 about their earlier training under Bessey and its implications for teaching:

As to teaching botany, I think the most effective teaching to which it was ever my good fortune to be subjected was when Dr. Bessey used to go about from one laboratory table to another, sit on the corner of the table and simply talk. I have come to suspect that there was a good deal of system and forethought behind those apparently casual talks. A casual inquiry as to what I was doing, how I was doing it, and why I was doing it, and about things botanical generally, was much more effective than any lecture possibly could be, and yet I have always felt that his lectures were models. I think if I could go about from table to table in the reading room every day and casually cross examine the students I could probably achieve more than can be done by any of the conventional methods of instruction. But we must wrestle with large numbers, and after all those who are worth while will find out how to do it, and those who are not won't get much of anywhere with any instructional methods we can devise.<sup>64</sup>

Structurally, Pound had been left largely to his own devices in his pursuit of scientific discovery.

The University of Nebraska was coeducational, but it was not fully open to women. The Sem. Bot was initially an all-male preserve (see Figure 3.3). Women and undergraduates were admitted only later (Edith Schwartz, the first woman member, subsequently married Frederic Clements).<sup>65</sup> The inner circle of the Sem. Bot. created its own bureaucratic niche, the Botanical Survey of Nebraska, of which Pound was the Director. The Survey, like the Sem. Bot. from which it sprang, was an exclusive, all-male preserve.

Bessey viewed women as problematic. With a vacancy to fill in 1908, Bessey wrote to Clements soliciting candidates and "explained" why he must hire a male assistant:

I must have a man; I will not take a woman. I have all the women now in the department that is permissible. I am afraid of "feminization," so I want a young man who is sufficiently prepared to help as an assistant in the big laboratory.<sup>66</sup>

Bessey was not alone. In 1904 the University Regents, concerned that "in liberal studies women are rapidly winning the ascendant," asked:

Have our programs or methods of instruction been growing effeminate, appealing to routine industry and memoriter proficiency, discouraging independent reflection and deep thought? (Manley 1969: 162).

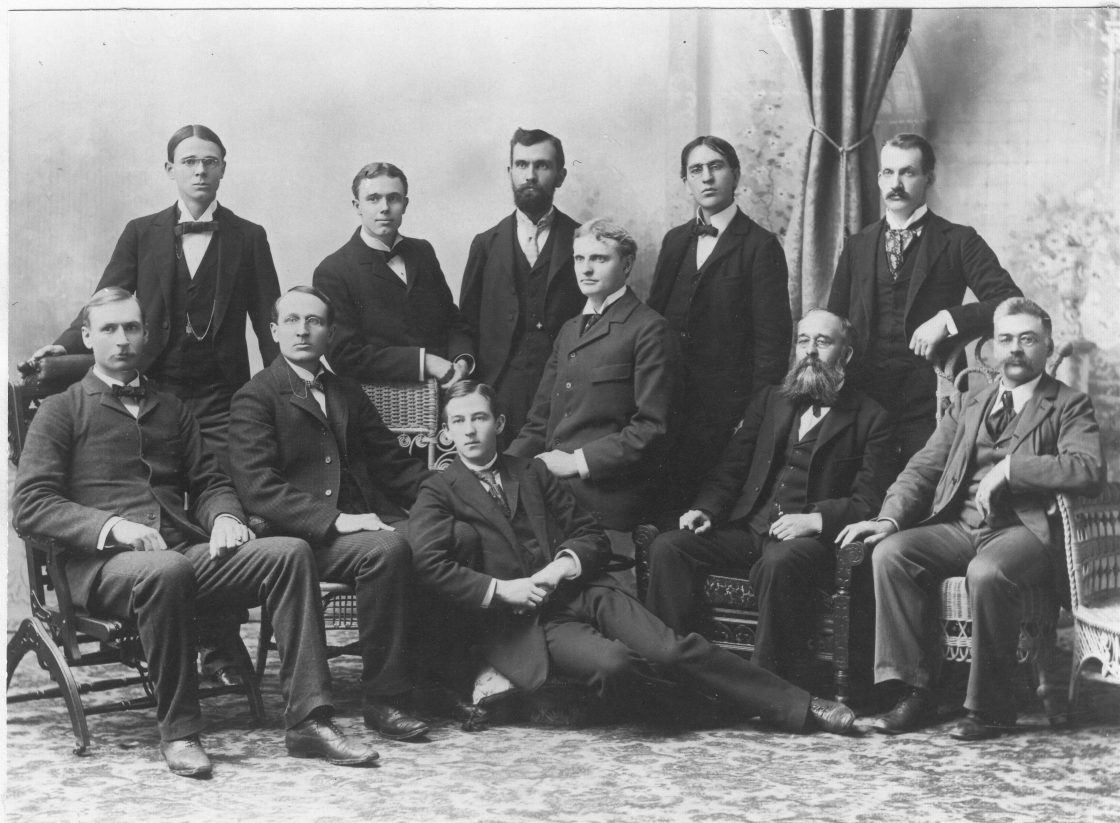


Figure 3.3. The Sem. Bot. in 1896.

[Back row, left to right: Roscoe Pound, Woods, Elmore, Frederic Clements, Saunders. Front row, left to right: Sher, Taylor, Ernest Bessey, Ward, Charles Bessey, Bruner]

Source: Records of the Botanical Seminar, University of Nebraska Archives.



In the years that followed, Pound argued that coeducation was good, but that women did not deserve equal consideration with men for admission to the Harvard Law School (Chapter 9). One suspects that Pound's mentor, Bessey, would have agreed with this fundamentally sexist perspective.

In 1907, Pound left Lincoln and moved to Northwestern University. By December, 1908, Bessey sensed that Pound's time and attention were increasingly drawn away from botany. He cautioned Pound:

Now my dear Pound (I am going to call you that although you are learned associate dean and ex-judge and professor and all that) I hope you will never forswear botany. I am sure that you will live longer and be happier if you keep a little botanical den into which you can retire when you are worn out with business of state. Keep it as a thing that you find pleasure in; keep it as a thing which will bring you perennially the pleasure of collecting, the pleasure of observing, the pleasure of getting away from the humdrum of your regular work. I am sure that if you do this, as the years come and go you will, while you add avoirdupois to your physical self, continue to have a mind that is full of meristem and that when you drop in among the boys and girls you will feel as young as you did when you were still an undergraduate on the old university campus.<sup>67</sup>

Pound's longevity must be accounted for elsewhere, as he had little time for botany after leaving Lincoln. He was swamped with law teaching at Northwestern University, work for the Illinois Law Review, organization of the upcoming

conference on Criminal Law and Criminology, and his imminent move -- after only two years at Northwestern University -- to a more prestigious and financially attractive position at the University of Chicago, a move which Bessey regarded "as a very marked promotion."<sup>68</sup>

Pound and Bessey now corresponded as full colleagues, reading and critiquing each other's work. In spring 1908, Pound complimented Bessey's new synopsis of plant phyla, having read it "with greatest interest and enjoyment." Pound's botanical acumen was apparently still keen. Among other points, he noted:

The division into fourteen or fifteen phyla seems to be well advised. Of course in a consecutive arrangement, one cannot be sure just what the author had in mind as to particular relationships. I suppose in arranging the Siphonmyceteae you had in mind a number of groups radiating, as it were, from a common point. I am not quite clear how the black moulds fit into the scheme.<sup>69</sup>

Bessey was "much gratified" by his former student's response and wrote, "I am impelled to ask you to make a short notice of it for Science. I do not know of anyone who appreciates this sort of thing any better than you." Further, he suggested that Pound "handle" the Nomenclature Department for the American Naturalist, noting, "since the Naturalist

comes out only once a month, this does not mean much if any burden."<sup>70</sup>

Pound replied he would try to write a note for Science, but cautioned, "I fear my hands have lost their botanical cunning."<sup>71</sup> As to the work for the American Naturalist, he wrote, "if this will not take too much time, I shall be glad to do it simply to keep my hand in."<sup>72</sup> Pound wrote to Dr. Cattell, editor of the American Naturalist, "agreeing to contribute editorial review or notes upon Botanical Nomenclature, as suggested."<sup>73</sup> Pound's acceptance of Bessey's prodding was reticent, yet aggressive:

I do this with a good deal of hesitation because frankly I feel densely ignorant on the subject. I haven't the faintest idea what has been going on the last seven years, and have so many things on hand that I am perpetually afraid I shall not half do any of them. Nomenclature, however, is a matter which stands particularly in need of treatment from someone who is not afraid to speak out plainly. Possibly on that account I may be of some service. At any rate, I am going to try, and am obliged to you for suggesting the matter.<sup>74</sup>

These were probably among the last of Pound's botanical efforts. It is not clear that the item for Science was ever written or that the Nomenclature department of American Naturalist made many demands.

Bessey took active interest in Pound's new work in law and wrote to thank him in April 1908 for sending a copy of

"Common Law and Legislation."<sup>75</sup> When Pound later sent a copy of "Inherent and Acquired Difficulties in the Administration of Punitive Justice," Bessey replied (noting specific page references) indicating points he thought especially well done, and concluded:

Now there is a difficulty in the whole matter. Just as in botany we find that the botanists know a lot of things that should be known by many other people, so you have here a great many thoughts that the common people should get at. These pages that I have cited should be worked over into such form that they can be read very widely. Somebody will have to do work of this kind. There must be a popularization of legal views as we have a popularization of science, and this must be done by the men who know the subject. In science we have suffered from the quacks and the charlatans, and we know that in the law we have had the same trouble. I think the lawyers and jurists will have to turn to the business of popularizing the better thought and conclusions which the common people have not yet reached. Perhaps you get my ideas, I have not expressed them very well, but you see what I mean.<sup>76</sup>

Others also urged popularization of Pound's ideas, and Pound replied that he had "for some time felt that there is a need of work along the lines suggested" by Bessey. He confided that "he had been engaged upon a series of articles with the view possibly to a book ultimately to be entitled Sociological Jurisprudence."<sup>77</sup> Yet, even with overtures from a publisher, Pound did not allot time to work on this project. There was even less time for botany.

With Bessey's death, the direct tie was broken, but Pound maintained a continuing interest in the welfare of Bessey's widow. Pound was "much disappointed" to learn in 1915 that Mrs. Bessey "failed to receive the pension which we felt was no more than her due." He corresponded with officials at the University of Nebraska Foundation on the topic and reported to Chancellor Avery, "I confess I was somewhat astonished at the result." He wrote it was "unfortunate" that a "matter of such urgency as Mrs. Bessey's" had not been pressed, "involving as it does the widow of one of the country's greatest scholars."<sup>78</sup> Pound subsequently took part in successful efforts to raise funds for a memorial to Bessey, the interest from which was designated for Bessey's widow during the remainder of her life.<sup>79</sup>

Bessey gave to Pound a structurally-advantaged work setting in a bureaucratically immature university. He delighted in the energy and productivity of his young male students and their secret society, the Sem. Bot. As a contributing editor of a national botanical journal, Bessey provided a publishing conduit for the neophyte scientists in the Sem. Bot. With few organizational precedents to hinder Pound's seemingly endless energy and talent, Bessey stood aside and only lightly guided his able pupil's drive to new ecological insights. When Pound and Clements wrote a joint

doctoral thesis, Bessey was supportive and winked at bureaucratic obstacles to its completion. When Pound became a mature scholar and academic equal, Bessey lamented Pound's move from botany. Simultaneously, he admired Pound's success in law.

### Clements, Cowles, and The Growth of Ecology

Pound did not confront ecological issues head-to-head again until his service on the National Commission on Law Observance and Enforcement in 1929-1931, but Clements pressed onward with ecological studies and became a national leader. Clements, at the University of Minnesota, shared the leadership in ecology with Henry Cowles of the University of Chicago. The turn of the century marked a vigorous and pioneering era in ecology.

A major center of ecological study developed virtually overnight at the University of Chicago, where Henry Cowles studied the ecology of the Lake Michigan sand dune country in northern Indiana and western Michigan. Cowles' (1899, 1901) studies became classics in ecology and are much better known than the collaborative work of Pound and Clements (although Clements' later work is often cited). As James and Jones (1954: 432) put it, "early American ecology evolved under the leadership of F.E. Clements and H.C.

Cowles." The University of Chicago was an instant magnet in many fields, not just sociology.

Cowles arrived on the scene in 1895, impressed by the dunes landscape he observed en route to Chicago to begin graduate study:

After examining the [Michigan] dunes and vowing to return, Cowles continued on to the new University of Chicago to begin his graduate fellowship in geology. He could not have found a more stimulating or conducive milieu for his doctoral work. With the millions provided by John D. Rockefeller, the young university aspired to become the intellectual center of the Midwest. President William Rainey Harper chose his faculty from among the leading scholars of the nation. (Franklin and Schaeffer 1983: 29).

Cowles soon switched to botany, and worked under John Coulter. By 1897, Cowles was appointed assistant in botany and taught a course in plant ecology, then a very new branch of scientific enquiry. It is interesting that dune ecology, for Cowles in the midwest, and for Pound in the Nebraska sandhills, should be integral to the two major ecological movements in the United States.<sup>80</sup> Pound and Clements' studies were accomplished on a shoestring, Cowles' with the backing of the Rockefeller fortune.

Clements' Work in Ecology and its Relation to Sociology.

In 1905, Clements wrote Research Methods in Ecology, a systematic exposition on research methods and theoretical concepts in ecology as then understood. Clements was Associate Professor of Plant Physiology at the University of Nebraska and Pound was Dean of the Law School. Clements wrote that the book was not a textbook but rather "a handbook for investigation and for advanced students in ecology" (1905: iii). Pound kept up with Clements' work and Clements gave acknowledgment (in the preface to Research Methods) "for criticism and suggestions . . . to Professor Doctor Charles E. Bessey and Professor Doctor Roscoe Pound who have read the text" (1905: iii).

Research Methods in Ecology anticipated later use of ecological thinking in sociology. Clements specifically wrote that the applications of ecology are numerous, including possibilities in the fields of zoogeography and sociology. With respect to sociology, he noted:

it will be pointed out below that the principles of association which have been determined for plants, viz., invasion, succession, zonation, and alternation, apply with almost equal force to man. (1905: 11).

The text of Clements' digression on sociology is short but succinct, and is here quoted in full:



In its fundamental aspects, sociology is the ecology of a particular species of animal, and has in consequence, a similar close connection with plant ecology. The widespread migration of man and his social nature have resulted in the production of groups or communities which have much more in common with plant formations than do formations of other animals. The laws of association apply with especial force to the family, tribe, community, etc., while the laws of succession are essentially the same for both plants and man. At first thought it might seem that man's ability to change his dwelling-place and to modify his environment exempts him in large measure from the influence of the habitat. The exemption, however, is only apparent, as the control exerted by climate, soil, and physiography is all but absolute, particularly when man's dependence upon vegetation, both natural and cultural, is called to mind. (1905: 16).

Clements, who early gave mature definition to such central ecological concepts as "habitat," "invasion," "succession," etc., was well ahead of sociologists at the University of Chicago (Robert Park and Ernest Burgess, in particular) who later claimed human ecology as their special province.

During the period when Research Methods in Ecology was written, Clements talked with E.A. Ross about ecology and sociology. In 1936, Ross wrote to Clements:

About thirty-two or thirty-three years have passed since we had that long talk about ecology and you evinced your insight into some of the problems which beset the sociologist.<sup>81</sup>

Their friendship thus rekindled, the Ross-Clements correspondence continued over the next few years, and the two scholars exchanged articles. Ross' praise could be ecstatic. After reading Clements' (1935b) article on "Social Origins and Processes among Plants" which appeared in a social psychology compendium, Ross wrote:

Thank you for favoring me with a reprint of the chapter by you in A Handbook of Social Psychology. It is a beautiful piece of work, so well done in fact that a hundred years hence it may command respect.<sup>82</sup>

High praise from Ross, one of the two acknowledged founders of social psychology.

In 1939, Ross asked for a Clements (1938) reprint mentioned in an earlier letter. When it arrived, Ross wrote:

The reprint of your article on "Climatic Cycles and Human Populations" came to my desk at the very time I was wrestling with a paragraph suggesting how changes in societies are brought about by slow, unobserved alterations. You can imagine with what interest I have read the article. It pleases me immensely and I deem it very valuable. Probably two or three paragraphs in my next book, NEW-AGE SOCIOLOGY will bear the imprint of your article.<sup>83</sup>

Clements' major intellectual impact on sociology, however, occurred during the early 1920s.

Clements not only fed material to Ross, but also inspired the ecological school of sociology begun at the University of Chicago in the Department of Sociology (Matthews 1977: 138). Robert Park and Ernest Burgess (1921: 526-528) reprinted an adapted excerpt from Clements' (1916) Plant Succession in their Introduction to the Science of Society. Park and Burgess (1921: 571) posed the following among a series of discussion questions:

17. How far can the terms migration, ecesis, and competition, as used by Clements in his analysis of the invasions of one plant community by another, be used in the analysis of the process by which immigrants "invade" this country, i.e., migrate, settle, and are assimilated, "Americanized"?

The answer, for Park and Burgess, was evidently "pretty far." They wrote:

Biological research in recent years has directed attention away from the theory of evolution to field study of plant and animal communities. Warming, Adams, Wheeler, and others have described, in their plant and animal ecologies, the processes of competition and segregation by which communities are formed. Clements in two studies, Plant Succession and Plant Indicators, has described in detail the life-histories of some of these communities. His analysis of the succession of plant communities within the same geographical area and of the relations of competitive co-operation of the different species of which these communities are composed might well serve as a model for similar studies in human ecology. (Park and Burgess 1921: 554).

With Clements as a model, the ecological perspective permeated the work of Chicago school sociology under Park and Burgess, as evidenced particularly in the work of Shaw and McKay. The fact that Pound was an accomplished ecologist and literally built the ground floor of Clements' subsequent work is especially interesting in light of Shaw and McKay's later delinquency studies in Chicago (Chapter 7). James and Jones (1954: 27-28) note that in 1921, "the sociologist Robert E. Park had tentatively suggested modeling the study of human societies on plant communities and calling it human ecology." Clements, however, made precisely the same point in 1905 as an Associate Professor of Plant Physiology at the University of Nebraska.

### Disciplinary Memory

In 1942, Pound learned from his sister, Olivia, that his botanical collections, left in Lincoln for years, had not survived. He wrote:

[I] do not feel particularly badly that it has probably been destroyed. The Statute of Limitations ran [out] on my botanical activities long ago.<sup>84</sup>

The "statute of limitations" also expired on the disciplinary memory of Pound's foundational contributions to modern ecology. Pound's name did not survive in the

ecological literature he helped fundamentally to shape (a happy exception is Tobey 1981). While Clements' place appears relatively secure in the history of ecology, survey's of plant sociology and ecological techniques make no note of Pound's contributions (e.g., Braun-Blanquet 1931; Mueller-Dombois and Ellenberg 1974; Chapman 1976). At the time of Clements' death, he was remembered in obituaries in Ecology (Shantz 1945) and the Journal of Ecology (Tansley 1947), and in a retrospective in Ecology (Pool 1954; Pound 1954). When Pound died in 1964, however, there was no notice in the ecological journals. In addition to Clements' own ecological writings, his wife wrote an autobiography that reflected on his work (E. Clements 1960) and she coedited a posthumous collection of her husband's articles (Clements 1949). Pound, on the other hand, had neither botanical wife nor botanical students to carry on his work or cite his name. Without the requisite institutional infrastructure, Pound's pioneering contributions to modern ecology were largely dropped from disciplinary memory. It is a recent and presently isolated event in which Ayer reprinted Pound and Clements' landmark Phytogeography of Nebraska in Ayer's "History of Ecology Series" in 1978. A similar fate awaited the majority of Pound's work in sociology.

### Notes for Chapter 3

1. A portion of this chapter (on Pound's M.A. in botany) was presented at the 1988 meetings of the Nebraska Academy of Sciences Meetings and has been published in the Transactions of the Nebraska Academy of Sciences (Hill 1988).

2. Frederic E. Clements (1905: 16) in his Research Methods in Ecology.

3. For example, detailed discussions of legal issues and extra-curricular law studies are replete throughout Pound's letters to Omer F. Hershey during 1891-1892. Paul Sayre Papers, University Archives, University of Iowa, Iowa City (hereafter, Sayre Papers).

4. Board of Regents, Minutes of Meetings, February 18, 1899, Reel 2, 1897-1909, University Archives, University of Nebraska-Lincoln.

5. R. Pound to O. Pound, 30 March 1946, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society; Lincoln Star, December 11, 1928, p. 13, col. 2.

6. George Howard was an early member of the Nebraska State Historical Society, as were Laura and Stephen Pound. Amos G. Warner was also an early participant, as a student.

7. Records of the Sem. Bot., p. 5., Department of Botany, Records of Botanical Seminar, 1886-1970, Box 1, University Archives, University of Nebraska-Lincoln.

8. Ibid.

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

13. Records of the Sem. Bot., pp. 16-18.

14. Examinations of Candidates, Box 1, Department of Botany, Records of the Botanical Seminar, 1886-1936, University Archives, University of Nebraska-Lincoln.
15. See anterior pages of the Records of the Sem. Bot.
16. The Book of the Sem. Bot., p. 5, Nathan Roscoe Pound Collection, Box 4, Clippings, State Archives, Nebraska State Historical Society. The Book of the Sem. Bot. is a twenty-nine page pamphlet outlining the history, principles, initiation rituals, and traditions of the Sem. Bot. No author, place, or date of publication is given. Due to references within the pamphlet, it must have been written sometime after 1906. What appears to be a draft for The Book of the Sem. Bot. in Pound's handwriting is found in the archives at Harvard (Box 253, Folder 5, Roscoe Pound Papers, Rheingold addenda, Harvard Law School Library).
17. The Book of the Sem. Bot., p. 2.
18. Ibid.
19. Records of the Sem. Bot., p. 6.
20. Ibid., pp. 6-7.
21. Ibid., pp. 5-8.
22. Ibid., p. 7.
23. Woods to Sayre, 15 November 1944, Sayre Papers.
24. Ibid.
25. Records of the Sem. Bot., p. 7.
26. Pound to Bessey, 14 September 1908, Reel 21, Bessey Papers.
27. Ibid.
28. Records of the Sem. Bot., p. 5.
29. Pound to Bessey, 14 September 1908, Reel 21, Bessey Papers.
30. Pound to Bessey, 10 November [1889], Reel 24, Bessey Papers.

31. Records of the Sem. Bot., p. 9; Nathan Roscoe Pound, academic transcript, University Archives, University of Nebraska-Lincoln.
32. R. Pound to S.B. Pound, 22 December [1889], Nathan Roscoe Pound Collection, Box 1, Folder 1, State Archives, Nebraska State Historical Society.
33. Pound to Bessey, 10 November [1889], Reel 24, Bessey Papers.
34. R. Pound to Olivia Pound, 8 October 1945, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.
35. Unpublished reminiscence of Pound by Clements enclosed with letter, Clements to Sayre 17 January 1945, Box 125, Dr. Edith S. Clements and Dr. Frederic Clements Collection, Division of Rare Books and Special Collections, The Library, University of Wyoming (hereafter, Clements reminiscence).
36. Ibid. Small funds were obtained from the University for various projects, as when Pound drew "a warrant" for his expenses on the Sand Hills expedition in 1892. When expenses exceeded available funds, however, Pound apparently made up the difference. In 1899, the Botanical Survey obtained a special legislative appropriation out of which various expenses could be paid. Board of Regents, Minutes of Meetings, February 18, 1899, Reel 2, 1897-1909, University Archives, University of Nebraska-Lincoln.
37. Pound to Hershey, 29 June 1892, Sayre Papers.
38. Pound to Hershey, 14 August 1892, Sayre Papers.
39. Pool to Sayre, 13 July 1946, Sayre Papers.
40. Records of the Sem. Bot., p. 75. Bessey was a charter member of the Nebraska chapter of Sigma Xi, organized in 1897. (Ward and Ellery 1936: 221). Clements was inducted in 1901 (Ward and Ellery 1936: 227). Pound's initiation is officially recorded in Ward and Ellery (1936: 236).
41. Clements reminiscence.
42. Ibid.
43. Ibid.



44. Ibid.

45. For a worked example of quadrat sampling in behavioral geography, see my study of pedestrian route choice (Hill 1982: 93-99).

46. The first earned doctorate at the University of Nebraska was awarded a year earlier, in 1896, to Harold N. Allen. The Nebraska State Journal (June 12, 1896, p. 5, col. 5) reported, "The Chancellor announced that the degree of doctor of philosophy was the first time in course conferred. In the absence of the candidate, Prof. Harold N. Allen, the degree was formally conferred." (See also, University of Nebraska 1897: 20).

47. Professors Ward and Barbour were assigned to assist in the botany examination. Dr. Johnson and Professor Caldwell were appointed to assist Professor Barbour to examine Pound in his minor in Roman Law. Faculty minutes, May 17, 1897, University Archives, University of Nebraska-Lincoln..

48. Ibid., May 31, 1897.

49. Ibid., June 5, 1897.

50. Ibid.

51. Ibid.

52. Board of Regents, Minutes of Meetings, June 8, 1897, Reel 2, 1897-1909, University Archives, University of Nebraska-Lincoln..

53. Faculty minutes, June 4, 1898, University Archives, University of Nebraska-Lincoln.

54. Clements reminiscence.

55. Ibid.

56. Ibid.

57. Nebraska State Journal, June 11, 1897, p. 8, col. 3.

58. Hale's Phi Beta Kappa speech was reported in the Nebraska State Journal, June 10, 1897, p. 8, col. 1. Pound was a member of Phi Beta Kappa and was secretary-treasurer of the Alumni Association which sponsored a banquet at which Hale was an honored guest.

59. Bessey to Pound, 3 December 1908, Reel 21, Bessey Papers.
60. Clements reminiscence.
61. Pound to Bessey, 9 December 1907, Reel 18, Bessey Papers.
62. Pound to Bessey, 11 May 1908, Reel 21, Bessey Papers.
63. Pound to Clements, 18 January 1924, Box 9, Folder 29, Roscoe Pound Papers, Harvard Law School Library.
64. Pound to Clements, 27 March 1924, Box 9, Folder 29, Roscoe Pound Papers, Harvard Law School Library. At age 92, Pound remarked, "I don't suppose I could measure it what I owe to him [Bessey], in the training I got from him, in how to go about how to find out about things." Interview with Dean Roscoe Pound, Harvard University, 12 July 1962, by Robert Manley.
65. Edith Clements became a botanist and wrote several books with her husband. Her recollections, which shed little light on Pound's Nebraska years are found in her autobiography (E. Clements 1960).
66. Bessey to Clements, 18 July 1908, Reel 19, Bessey Papers.
67. Bessey to Pound, 3 December 1908, Reel 21, Bessey Papers.
68. Bessey to Pound, 29 April 1909, Reel 23, Bessey Papers.
69. Pound to Bessey, 11 March 1908, Reel 21, Bessey Papers.
70. Bessey to Pound, 26 March 1908, Reel 21, Bessey Papers.
71. Pound to Bessey, 28 March 1908, Reel 21, Bessey Papers.
72. Pound to Bessey, 1 April 1908, Reel 21, Bessey Papers.
73. Pound to Bessey, 11 May 1908, Reel 21, Bessey Papers.
74. Pound to Bessey, 11 May 1908, Reel 21, Bessey Papers.
75. Bessey to Pound, 4 April 1908, Reel 21, Bessey Papers.

76. Bessey to Pound, 30 April 1908, Reel 21, Bessey Papers.
77. Pound to Bessey, 11 May 1908, Reel 21, Bessey Papers.
78. Pound to Avery, 14 June 1915, Box 1, Folder 12, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.
79. Samuel Avery to Pound, 16 October 1915, R.G. 2/9/3, Chancellor's Papers, Samuel Avery, 1915-1925, University Archives, University of Nebraska-Lincoln.
80. For what must be the earliest sociological perspective on Chicago and the Michigan and Indiana dune country, see Harriet Martineau's (1839, I: 312-364) descriptive account of her travel through this region in her Society in America.
81. Ross to Clements, 13 January 1936, Box 19, Folder 4, Edward A. Ross Papers, State Historical Society of Wisconsin.
82. Ross to Clements, 25 July 1935, Box 19, Folder 2, Edward A. Ross Papers, State Historical Society of Wisconsin.
83. Ross to Clements, 6 April 1939, Box 22, Folder 2, Edward A. Ross Papers, State Historical Society of Wisconsin. Ross also noted, "Now that I am past 70 and retired, I am having lots of fun writing my twenty-sixth book."
84. R. Pound to Olivia Pound, 8 October 1942, Box 1, Folder 6, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

## CHAPTER FOUR

### SOCIOLOGY, COMMUNITAS, AND ALIENATION AT THE UNIVERSITY OF NEBRASKA, 1899-1907

A university that is not lively is not worth attending,  
especially in the western states.

-- The Nebraskan, 1892<sup>1</sup>

Undoubtedly the greatest single event after  
Chancellor Andrews came to Nebraska was the arrival of  
Edward Alsworth Ross -- the big tall Westerner  
with a sandy mustache and giant stride.

-- Burdette G. Lewis<sup>2</sup>

#### Introduction

Roscoe Pound's introduction to sociology began at the University of Nebraska during the first decade of the twentieth century at the close of Nebraska's pioneer period. When the University of Nebraska first opened its doors it was literally a pioneer school in a pioneer state (Aughey 1881). Mary Jo Deegan (Forthcoming f) notes, "Nebraska was a tumultuous new state in 1869, the year its major

University was founded. The early sociologists at Nebraska reflected this bumptious and daring spirit." Compared to schools in the east, Nebraska was an open, lively, coeducational institution and not yet overly fettered by bureaucratic red tape and administrative precedent. The period of Pound's introduction to sociology was grounded in the frontier traditions of community, homesteading, and innovation, but also reflected the closing and reification of institutional as well as geographical frontiers.

Nationally-significant accomplishments blossomed in several quarters of the University of Nebraska during the first years of the twentieth century. In botany, for example, Professor Bessey and his students continued to build the American school of plant ecology cofounded by Roscoe Pound and Frederic Clements (Chapter 3). In psychology, from 1889 to 1930, the University of Nebraska trained more undergraduate majors who later attained the presidency of the American Psychological Association than has any other school, past or present (Benjamin and Bertelson 1975).

In sociology, the new century began in the midst of Charles Ellwood's short-lived, unpaid appointment to teach part-time at Nebraska while tending simultaneously to the Lincoln Charity Organization (for his theoretical perspective at that time, see Ellwood Forthcoming). Edward

A. Ross' Nebraska years (1901-1906) were his most intellectually productive (Weinberg 1972). Roscoe Pound's sociological imagination took root after Ross' arrival at Nebraska. Pound built the foundations of American sociological jurisprudence, and burst upon the national legal scene with his landmark speech to the American Bar Association in 1906. In 1904, George E. Howard returned to the University of Nebraska where he transformed his institutional approach to history into a lasting sociological legacy.

At the turn of the century, the Lincoln campus was a scholarly community alive with ethical, political, and social scientific discussions. All-campus colloquiums featured faculty analyses of pressing social and intellectual issues, and included presentations by Ross, Howard, and Pound. To use a phrase that has lost its vibrancy and value in today's world, the Lincoln campus was legitimately a "community of scholars." Professors, students, and alumni gathered regularly for evenings of cross-disciplinary discussion, debate, and fellowship. It was also a time of campus camaraderie and good-natured, anti-structural *communitas*.

In this chapter, which reconstructs the institutional setting of Pound's introduction to sociology, Mary Jo Deegan's (1989b) theory of American ritual drama and

critical dramaturgy provides a framework for analysis of the distinctive characteristics of community and *communitas* on the Lincoln campus at the turn of the century. In Deegan's (1989b: 9) theory, "*communitas*" is a concept borrowed from Victor Turner that refers specifically to:

the emotional surety that one's world is just and shared; that being with others can be a unifying experience; that the actor is not always "acting" and pushing the self forward to the detriment of others. It forms the basis for human commitment to the group, to the other, and to oneself.

Patterned activities that create *communitas* are called "anti-structural" because they differ structurally from the divisive and alienating institutional patterns of mundane, routine, everyday life.

The generation of *communitas* in American society is, more often than not, frustrated by what Deegan (1989b: 20-24) calls the core "codes of oppression" (i.e., sexism and capitalism) and "codes of repression" (i.e., bureaucratization and the commodification of time). Whereas *communitas* leads to renewal and creativity, the "core codes generate alienation" (Deegan 1989b: 24). This chapter documents the initial rise (reflected in the intellectual creativity of Ross, Pound, and others) and the subsequent alienating eclipse of *communitas* (represented by the

resignations of Ross and Pound) at the University of Nebraska during the first decade of the twentieth century.

The contending forces of conformity, oppression, and repression, on the one hand, and creativity, liminality, and *communitas*, on the other, interacted at the University of Nebraska to create the particular milieu in which Roscoe Pound's sociological imagination awakened. Pound's vision of sociological jurisprudence (Chapter 8), which is simultaneously liberating and elitist (Chapter 9), reflected the growing tension on the Lincoln campus between bureaucratic hegemony and control, on the one hand, and the creative forces of intellectual play and *communitas* among scholars, on the other. The mix of social and institutional circumstances at Nebraska that facilitated Pound's discovery of sociology was liberating as well as controlling, and foreshadowed both the genius and the limitations in Pound's sociological work.

Despite the excitement and the promise, turn-of-the-century Nebraska marked an era of missed opportunities in the social sciences. During this period, the University of Nebraska not only attracted, but also lost the majority of its preeminent social scientists, including: Edward A. Ross, Roscoe Pound, Alvin S. Johnson, A. Ross Hill, and Charles Ellwood. The planning and momentum generated by the faculty to create a model interdisciplinary School of the

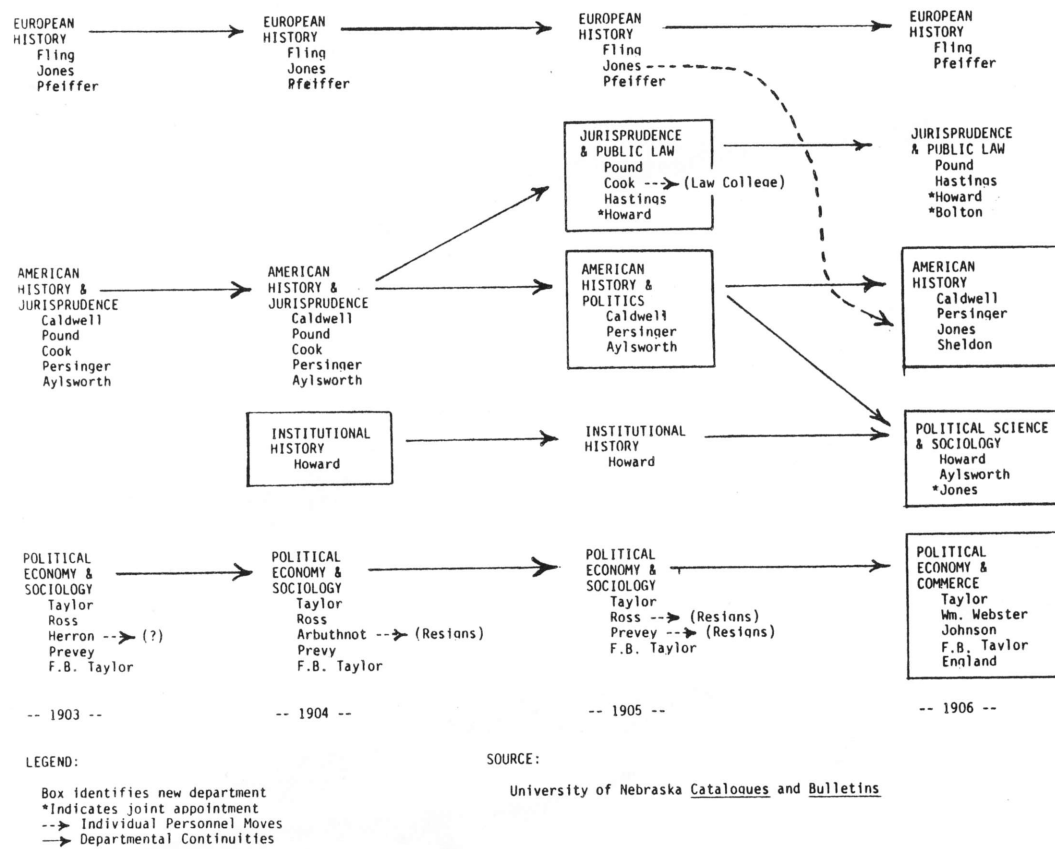


Social Sciences in 1905 was lost due to administrative inaction. Communitas was undermined by factionalism among the faculty, administrative meddling, and politically-embedded actions by the Board of Regents. To "escape" the deadening effects of increasing bureaucratization and alienation, many productive scholars, including Pound, "resolved" the conflict between control and creativity not by confronting the fundamental structural opposition between alienation and communitas, but by seeking and accepting more prestigious and personally instrumental posts at more powerful schools.

#### Bureaucratic Definition and Differentiation of the Social Sciences at the University of Nebraska, 1901-1906

The task of excavating the archival record for the period 1901-1906 is somewhat eased by providing a roadmap of the bureaucratic definition and differentiation of the social sciences at the University of Nebraska. As Figure 4.1 shows graphically, this was a period of considerable instability, organizationally speaking. At the time Edward A. Ross joined the faculty in 1901, the social sciences were housed in three departments, specifically: European History; American History and Jurisprudence; and Political Economy and Sociology. By the end of 1906, however, there were five social science departments, resulting from the

Figure 4.1. Social Science Departments, 1903-1906



creation of new departments and the reorganization of existing departments.

In 1903, during his first semester as Dean of the College of Law (discussed further below), Pound took the initiative to reorganize the parallel teaching of law courses within the College of Law and the College of Literature, Science, and the Arts. In the latter college, law courses were offered in the Department of American History and Jurisprudence. Pound presented his case to Chancellor Andrews in November 1903:

The tacking of Jurisprudence to the chair of American History was a temporary clumsy makeshift, at a time when the work was in embryo, and it was expected that I would conduct it for a few years until someone could be found to carry it out. I have been doing the work now for six years, and it grows larger every year . . . . We also have trouble with those who see the statement in the Law School calendar as to work in the department of American history and jurisprudence and are misled thereby. The subjects are intrinsically distinct, and should not stand together when the temporary reason for their association has passed.<sup>3</sup>

Pound recommended creating two new departments, specifically: a Department of American History and Politics and a Department of Jurisprudence and Public Law. Expansively, Pound thought the latter should be further divided into three additional departments in the future:

Ultimately, there should be three: Jurisprudence, Public Law, and International Law and Diplomacy. But for many years to come, Professor Cook and I can do all the work of the three in one department of Jurisprudence and Public Law. We could do this under our present titles of Professors of Law. I do not think any change is needed beyond putting us by ourselves, so that our courses will not be lost in the more extended list offered by the department of American History proper.<sup>4</sup>

Pound reported that several conferences with Professors Caldwell and Cook had been effected and that "we are all of opinion that the change is expedient and highly desirable."<sup>5</sup>

Two weeks later, H.W. Caldwell made the formal request to Chancellor Andrews and the Regents to establish the new departments. Caldwell's proposal specified which courses would go to each department. Caldwell (who taught constitutional law to Pound during the latter's undergraduate senior year in 1887-1888), was not fully pleased by the new arrangements. He lamented:

Finally I must admit it is just a little hard after one has worked for many years to develop a department to see it thus divided; but I feel confidence that the University will be best served by such a reorganization, so I make the recommendations as above.<sup>6</sup>

Pound, a new administrative officer, loosed an arrow of alienation, injuring Caldwell's pride and sense of organizational continuity.

The arrival (and return to Nebraska) of George Elliott Howard in 1904 resulted in a new department, Institutional History, in which Howard was the Chair and only Professor. Howard, who had studied jurisprudence in Europe, was soon given a joint appointment in Pound's Department of Jurisprudence and Public Law. And during the final year of Pound's deanship, Howard was also appointed to the faculty of the College of Law.<sup>7</sup>

On December 1, 1905, W.G. Langworthy Taylor (Chair of the Department of Political Economy and Sociology) and E.A. Ross (a member of that department) wrote jointly to Chancellor Andrews reminding him of "the pressing need of the founding in our university of a chair of commerce." Outlining in detail the need for commercial education, they noted that it could not be supported with the present staff:

In the University of Nebraska, besides the Professor of Political Economy, we have Professor Ross giving less than half his time to economics, and instructor at \$500.00 a year, giving half time, and a lady giving two lectures a week without pay. Look on this picture and then on that! Is it not high time that something was done for business education in the University of Nebraska? Our recommendation is the founding at once of a full chair in commerce.<sup>8</sup>

The recommendation by Taylor and Ross set the scene for what would become the Department of Political Economy & Commerce.

In 1906, however, E.A. Ross left the University of Nebraska, setting in motion a series of administrative re-alignments on the Nebraska campus. The conditions for Ross' exit from the University of Nebraska were secured early in the fall semester of 1905-1906 when Richard T. Ely successfully negotiated funds to appoint a Professor of sociology at the University of Wisconsin.<sup>9</sup> A formal offer was extended to Ross in mid-December.<sup>10</sup> Ross accepted, and by December 20, 1905, Ely wrote happily to Ross:

I am glad to see by a telegraphic dispatch in the paper this morning that you have resigned your position in the University of Nebraska to accept a professorship here.<sup>11</sup>

Ross' resignation was known publicly throughout the course of his final semester in Lincoln during the spring of 1906.

Ross' coming departure spurred organizational changes in Lincoln that directly affected the fortunes of sociology in general and George Howard in particular. On February 8, 1906, George Howard wrote to Chancellor Andrews proposing further departmental restructuring. He advanced the creation of a Department of Political Science and Sociology with himself as Chair. Howard wrote:

As you doubtless know, the original suggestion that the proposed department be placed in my hands came from Professors Ross and Taylor. After examining the project from all sides, I

have become enthusiastically in favor of it. It seems to me that the new grouping would be in the direction of proper differentiation and essential unification. There is opportunity, in a few years, to develop a great department, precisely in the field where there is most urgent demand for instruction.

After consultation with Professor Taylor and Professor Ross, it seems to me best that the new grouping of studies should be called the "Department of Political Science and Sociology"; and, as appropriate for the head of the department, that my own title should be "Professor of Political Science and Sociology." Thus the principal courses which I have given under the head of "Institutional History," although somewhat modified, would come under "Political Science," while personally I should have charge of "General Sociology" and certain other courses in social science.<sup>12</sup>

Howard's proposal was soon adopted.

In February 1906, the Board of Regents accepted Ross' resignation and made the following order:

Upon recommendation of the Chancellor it is ordered that, Beginning with September 1906 the department and professorship of institutional history will be discontinued, George E. Howard will be professor of political science and sociology and head of a department so named which is hereby constituted. Mr. L.E. Aylesworth will be instructor in political science in this department. All the courses in politics now listed under American history will be transferred to the new department, professor Caldwell's department and professorship being entitled simply American history."<sup>13</sup>

Thus, the new Department of Political Science and Sociology absorbed the Department of Institutional History and took over the teaching of politics. The University's two formally designated sociologists, Ross and Prevey, both resigned in 1906, leaving the Department of Political Economy and Sociology without any sociologists, and it was a straightforward matter for the former Department of Economy and Sociology to become the new Department of Political Economy and Commerce.

The new Department of American History, shorn of its political scientist, was joined by Guernsey Jones (formerly of the Department of European History). The Department of Jurisprudence and Public Law continued largely as before, with Pound at the helm, primarily as a graduate-level program. The departmental reorganizations accomplished by the end of 1906 established the administrative pattern of the social sciences for the next several years. This was the end of an era of exceptional administrative flexibility. It is unlikely that a similar thorough-going reorganization of departmental identities and missions in the social sciences could be accomplished today, if thought necessary, with such dispatch and aplomb.



### Student Newspapers and the Archival Data Base

The known archival record for this period includes little correspondence between the principal actors, and the following account relies heavily on newspaper reports and university organizational records to document the intellectual and collegial setting of Pound's discovery of sociology. The general scarcity of correspondence results from the face-to-face character of the interactions between campus colleagues such as Pound, Edward A. Ross, and George Howard. They had little occasion to write to each other, and thus few letters survive in archives. Ross' letters to non-Nebraskan colleagues (Lester Ward, in particular) reveal little about the origin and development of the Ross-Pound collaboration. Important traces of relevant campus activities are found in University administrative records, especially in the files of the Chancellor and the Board of Regents.

Published autobiographical sketches by Ross (1936: 87-100) and Alvin Saunders Johnson (1952: 169-180) provide useful, but extremely abbreviated accounts of this period. Ross characterized his five Nebraska years as robust and personally rewarding. Johnson's temporal window on this era was unfortunately narrow (only two years, 1906-1908), and he did not return to Nebraska (his alma mater) until after Ross' departure in 1906. The departmental histories

by Howard (Forthcoming) and Hertzler (1979) add further data. Other published data sources include the student newspapers.

The student newspapers at the University of Nebraska are repositories of topical activity and institutional data seen through the filter of student interest and reportorial ability. As such, the student paper is a collective life-history document in the same sense that letters and diaries are personal life-history documents. The student reporters of this era present a vivid picture of campus debate, intellectual achievement, and faculty collegiality.

The student newspaper record contrasts sharply with Nebraska historian Robert Manley's (1969: 160-176) description of the 1900-1909 era as characterized by faculty in-fighting and dissension. Two points require amplification to explicate this contrast. First, Manley relied heavily on Alvin Johnson's autobiography, an account based on Johnson's faculty experiences starting in autumn 1906. Johnson's Nebraska faculty years were disappointing and sour. He wrote caustically that:

among the thousands of chattering, flirting, footballing young cornfed Nebraskans, [I could not find] the fifteen or twenty serious students per course I needed to function well as a teacher. (Johnson 1952: 170).

But, Johnson missed the *communitas*-generating, all-campus colloquiums given by Ross and Pound. Johnson was not present to participate in the anti-structural camaraderie of the 1903-1905 Faculty Carnivals in which Ross played a particularly prominent part. By the time Johnson returned to his alma mater, the spirit of *communitas* was crumbling. When Johnson arrived on campus, the School of the Social Sciences had already been proposed and lost, Ross had departed for Wisconsin, and Pound, then Dean of the College of Law, was already a disappointed bureaucratic combatant who left at the first attractive opportunity.

Second, it is correct, as Johnson's autobiography reports, that faculty disputes and bureaucratic conflicts did exist at the University of Nebraska, and were apparently exacerbated after 1905. It is likely too that these tensions were not perceived by students, and thus went unreported in the student newspapers. Student editors and reporters were apparently quick to adopt favorable, supportive rhetoric when describing "their" University. No doubt interpersonal animosities among faculty and administrators were concealed "backstage" (Goffman 1959). Johnson (1952: 173), for example, was shocked by the bickering and disputes he witnessed as a faculty member, and remarked that as a student he had no inkling of such ill will and active hostility between faculty members.

Johnson attributed his shock to his naivete as a student, and concluded that the Nebraska faculty had always been a quarrelsome and embittered lot, unbeknownst to the students. No doubt there is a ring of insight in Johnson's analysis, insofar as undergraduate students are rarely privy to the "insider" battles in which academics sometimes become embroiled. Nonetheless, it makes little phenomenological sense to suggest that the evidence of community and *communitas* reported in the student newspapers prior to Johnson's faculty appointment in autumn 1906 is simply fiction without foundation. This chapter advances on the assumption that (a) Johnson's sense of shock was not due wholly to his previous naivete, but in part to his witness in 1906 of the rise of bureaucratic alienation and the concurrent decline of *communitas* at the University of Nebraska, and (b) that student newspapers do reflect, with some accuracy, at least some of the several "multiple realities" of everyday life (Schutz 1970-1971, I: 207-259).

Campus papers served functionally in the context of everyday university life. We read the microfilms today remembering that these papers were the turn-of-the-century bulletin boards for the varied activities and achievements of faculty members such as Pound, Ross, and Howard. The student papers depict Pound and his sociological colleagues

in a lively matrix of teaching, writing, research, and socializing.

Campus journalism located Pound, Ross, and Howard in a wide range of activities. For example, specific attention was called to: course descriptions,<sup>14</sup> classroom activities,<sup>15</sup> appearances at the Sem. Bot.,<sup>16</sup> talks to the student militia,<sup>17</sup> papers given at professional meetings,<sup>18</sup> organization of a law lecture series,<sup>19</sup> off-campus speeches in Lincoln and elsewhere in Nebraska,<sup>20</sup> professional publications,<sup>21</sup> essays on football,<sup>22</sup> football rallies and support for the football team,<sup>23</sup> reports on the activities of their former students, such as Edith Abbott,<sup>24</sup> hunting trips and "outings,"<sup>25</sup> and personal gossip.<sup>26</sup>

News items also focused on faculty participation in campus convocations, the Faculty Carnivals, the Graduate Club, threats to academic integrity, and Pound's years as Dean of the College of Law. The latter items, including earlier student participation in the undergraduate literary societies, are discussed below in greater detail. It is, of course, possible for student reporters to confuse the specifics of any given event, but it is assumed here that it is unlikely that their overall portrait of lively faculty activity is simply a mirage.<sup>27</sup>

To the degree that Pound, Ross, and Howard read the campus paper and/or "leaked" news items to it, the student

newspaper was a communication channel generating mutual awareness of their activities and facilitated understanding of issues that faced their students. "Reading the paper" was likely a practical source of information for the very principals on whom this chapter focuses. At the least, the papers supplemented and reinforced face-to-face communication opportunities on the campus. The pages of the Daily Nebraskan allow modern readers to "see" the Lincoln campus through a modality -- with the same biases and perspectives -- through which Pound, Ross, and Howard "saw" the campus when they and their friends took note of the student paper. The Daily Nebraskan's reportage on the Nebraska campus community was functionally active imagery in which the likes of Pound, Ross, and Howard saw themselves and their activities reflected. The present study does not comprehensively explore the lived realities of newspaper images, but the opportunity has been identified and remains an intriguing topic for future analysis.

#### Sociology at Nebraska before 1900

Sociology was "in the air" during Roscoe Pound's undergraduate (1885-1888) and graduate student (1888-1897), days at Nebraska. The early heralds of sociology prior to 1900 were George E. Howard, Irving J. Manatt, Amos Warner, Mary Tremain, A. Ross Hill, and W.G.L. Taylor. Pound's

undergraduate and graduate studies at Nebraska coincided and/or overlapped with the appointments of all six instructors. Nonetheless, what little formal social scientific training Pound obtained came largely at the hands of Chancellor I.J. Manatt.

Roscoe Pound's introduction to sociology followed on the heels of curricular innovations that brought instruction in sociology to the University of Nebraska in the waning years of the nineteenth century. Charles A. Ellwood, the first person officially appointed per se to teach sociology at Nebraska was called to Lincoln in 1899. Prior to this date, however, several instructors at Nebraska offered courses from a sociological perspective. Of the following, Pound studied with I.J. Manatt, probably knew George E. Howard as a guest in his parents' home, and knew Amos Warner when both Pound and Warner were students on the Lincoln campus. The early sociological courses at Nebraska included:

(1) 1879-1891: George E. Howard, Professor and Chair of History, employed an "institutional" perspective that transformed easily into his later specifically sociological courses at Nebraska (Howard Forthcoming).<sup>28</sup> Hertzler (1979: 42) noted that several of Howard's "early courses were in 'institutional history,' courses that in their treatment of the data and content were sociology rather than history."

Howard left Nebraska in 1891 to become one of the first faculty members called to the new Leland Stanford University in California. Howard returned to Nebraska in 1904, well after Pound had begun his sojourn in sociological jurisprudence at the instigation of Edward A. Ross.

(2) 1884-1887 -- Irving J. Manatt, Chancellor of the University and Professor of Political Science, offered a course from 1884 to 1887 on "Social Science: A Short Study of the Chief Data of Sociology" (Hertzler 1979: 42). Manatt also taught political economy, a course taken by Pound as an undergraduate (and discussed more fully below).

(3) 1889-1891 -- Amos G. Warner, Associate Professor and Chair of Economics and Political Science, taught at Nebraska and emphasized topics and teaching methods that later surfaced in American Charities (Warner 1894), his landmark analysis of social services in the United States (Howard 1908; Hertzler 1979; Deegan 1989).<sup>29</sup>

A former Nebraska student (three years Pound's senior), Warner's return to Nebraska as a faculty member in January 1889 (while Pound pursued botanical studies at Nebraska, and studied law for a year at Harvard) was anticipated in the student paper with the notice on December 15, 1888, that Warner "will be here and begin work next term. Prof. Warner will give an elective in social science."<sup>30</sup>



Warner's course, apparently taken over from Chancellor Manatt, was titled, "Social Science: A Short study of the chief data of Sociology" (Hertzler 1979: 43). From 1889-1891, Warner offered a course on "Charities and Corrections." Of this course, Hertzler (1979: 43) reported that Warner wrote:

The work is made as practical as possible by personal study of the problems as they exist in society. In the study of charities and correlations the class visited, in company with the instructor, the county jail, county alms house, the Tabitha Home, the home for the friendless, and the state penitentiary.

The course "ripened into Warner's American Charities, the standard text used in American colleges and universities for several decades" (Hertzler 1979: 44). Warner took the teaching methods developed in his course to Stanford, where his colleague E.A. Ross (1900: 1), observed that Warner "had his students visit jails, almshouses and asylums, police courts and city halls."

(4) 1895 -- Mary Adell Tremain, an Instructor in History and a graduate of the University of Nebraska (she was likely one of Howard's students) offered a sociologically pertinent course on "The Status of Women" that explored the "history of the development of [the] legal and social position" of women (Hertzler 1979: 44).<sup>31</sup>

(5) 1897-1900 -- A. Ross Hill, Professor and Chair of Philosophy, taught a course in "Social Psychology." In his course description, Hill stated, "It is hoped that this course will meet the needs of students of Sociology, Ethics, and Education" (Hertzler 1979: 44). The sociological affinity of Hill's course is evidenced by (a) his note that Charles Ellwood "lectured for me a portion of the second semester [spring 1900] on 'Social Psychology,'" and (b) Hill's 1901 transfer of the course to C.E. Prevey, a newly-hired lecturer in sociology.<sup>32</sup>

(6) 1898 -- William George Langworthy Taylor, Head of the Department of Political and Economic Science, offered the first course officially titled "sociology." Taylor, a former student of William James (Johnson 1952: 171), taught an elective course for seniors in "Sociology: Giddings, Patten, and Spencer" (Howard Forthcoming). Taylor linked sociology and economics, observing "sociology is allied closely with economics (especially as I am inclined to treat economics)."<sup>33</sup>

Of the instructors inventoried above, it was I.J. Manatt who principally influenced Pound's approach to the social sciences prior to 1900. Pound later recounted that Manatt taught the course in political economy "because there was no one else available to teach it." Political economy was a course officially required for classics majors like

Pound.<sup>34</sup> In retrospect, Pound gave high marks to Manatt's teaching of that course:

As I recall he taught me political economy out of Mill's Political Economy, and in the senior year, international law out of Davis' International Law. Today we should smile at a professor of Greek undertaking to do this. But as I think back over the matter I am not sure that he did not do both in a way better than specialists would do them now. What I recall about the course in political economy in particular is the modest effectiveness of it which at the time we quite misunderstood. If he had only made dogmatic pretensions, after the manner of teachers we know of, it could have been an immense success. For he was a real teacher. What he did, however, was worth infinitely more to us than ordinary teaching would have been if we had had sense enough to see it. I recall that he always insisted that we should be perfectly sure we thoroughly understood Mill's text before we started to criticise it.<sup>35</sup>

Manatt thus left a distinctive mark on Pound's scholarship:

I have since come to see that his insistence on the student absolutely understanding a book and not merely reading through it, and his insistence that criticism must come after thorough understanding, was in my own case of enduring value.<sup>36</sup>

Whereas Pound studied formally with Manatt, it is unlikely that Pound studied officially with George E. Howard.<sup>37</sup>

Informally, however, George Howard was a friend of the Pound family. Howard shared interests in law and history with both Stephen and Laura Pound and their son, Roscoe.<sup>38</sup>

Several structural factors enhanced the probability for encounters and interpersonal exchanges between Roscoe Pound and Howard. The Nebraska faculty was small,<sup>39</sup> and Howard, as co-founder and secretary of the Nebraska State Historical Society (of which Stephen and Laura were integral and supportive members), was probably a frequent guest in the Pound home. Nonetheless, despite early opportunities to rub shoulders with Howard, Roscoe Pound's mature introduction to sociology awaited the turn of the century and the arrival in Lincoln of Edward A. Ross.

#### The Rise of Nebraska Sociology, 1889-1906

Sociological interest and momentum in Lincoln reached new levels in 1901 with the arrival of Edward A. Ross. His appointment was preceded by Charles Ellwood's one-year stint from 1889-1900. Ellwood resigned (to head the department at Missouri) and was replaced in 1900 by C.E. Prevey, a promising young sociologist with a masters degree from Columbia University where he had studied with Franklin H. Giddings. As with Ellwood, Prevey's position was a half-time arrangement, split between the University and the Lincoln Charity Organization. With Ross' arrival, Prevey's attention turned more and more toward charity organization work while continuing to teach sociology courses on charities and statistics. Never completing further graduate

work, and laboring in Ross' extraordinary shadow, Prevey resigned from teaching in 1906 to work for the Lincoln Charity Organization. In turn-of-the-century Lincoln, it was Edward Alsworth Ross (Figure 4.2) who took center stage as Nebraska's first full-time Professor of Sociology.<sup>40</sup> And in 1904, Ross was joined by his old friend and colleague, George Elliott Howard (Figure 4.3).

Ross and Howard were well-known, particularly for their adamant defense of academic freedom. Ross' infamous firing from Leland Stanford University in 1900, and Howard's subsequent forced resignation from Stanford for supporting Ross, made national headlines (Weinberg 1972). When Ross came to Nebraska, he was instrumentally shaping the foundations of American sociology through Social Control and a series of articles in the American Journal of Sociology. Howard published his landmark treatise on the History of Matrimonial Institutions in 1904, and both Ross and Howard presented invited papers in the internationally prestigious Congress of Arts and Science at the Universal Exposition (world's fair) in St. Louis that same year.<sup>41</sup> Sociologically, it was Pound's extraordinary good fortune to be teaching at Nebraska during Ross' lustrum and Howard's return to Lincoln. As sociology broke new ground at Nebraska, Pound drew quietly on this resource to fashion the outlines of American sociological jurisprudence.

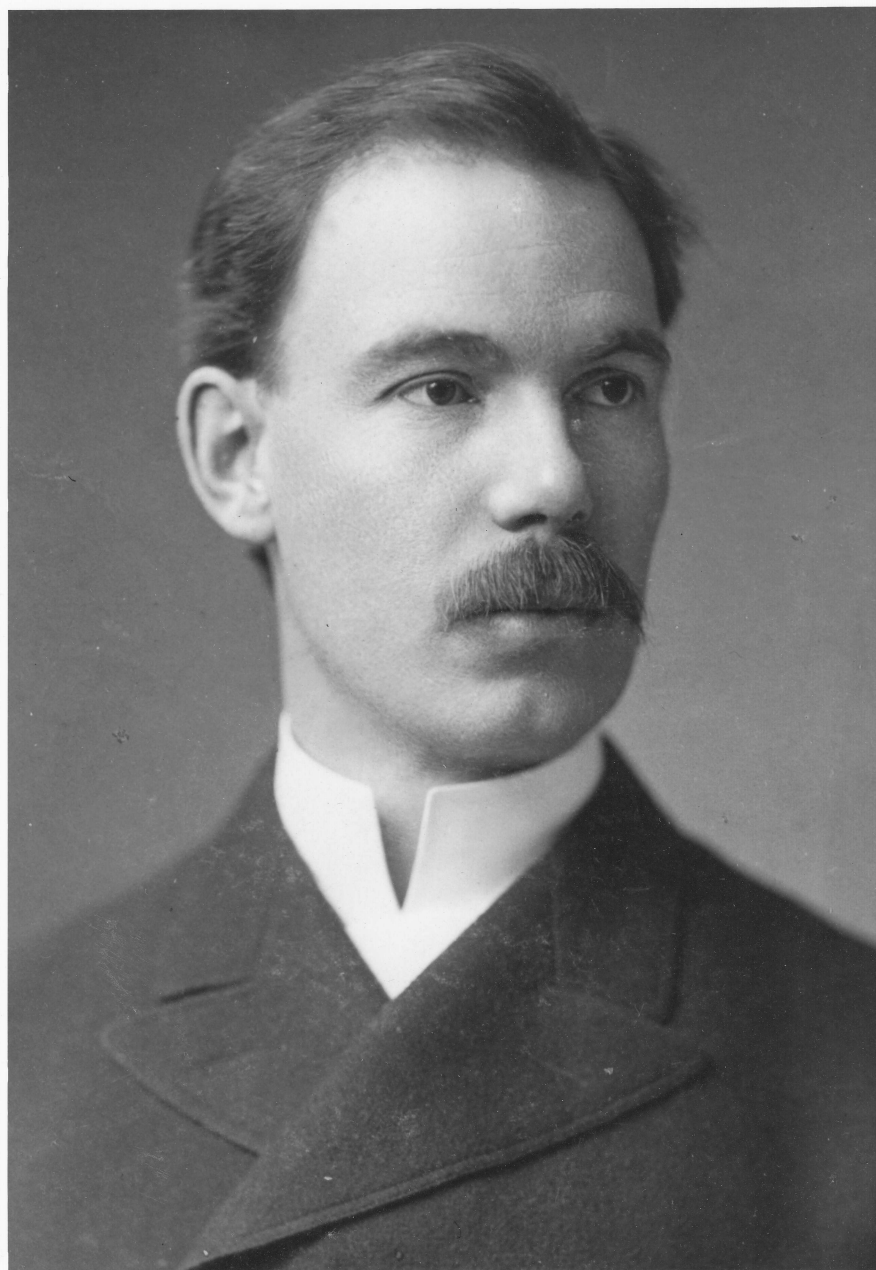


Figure 4.2. Edward Alsworth Ross, circa 1900

Source: University of Iowa, Chautauqua Redpath Collection

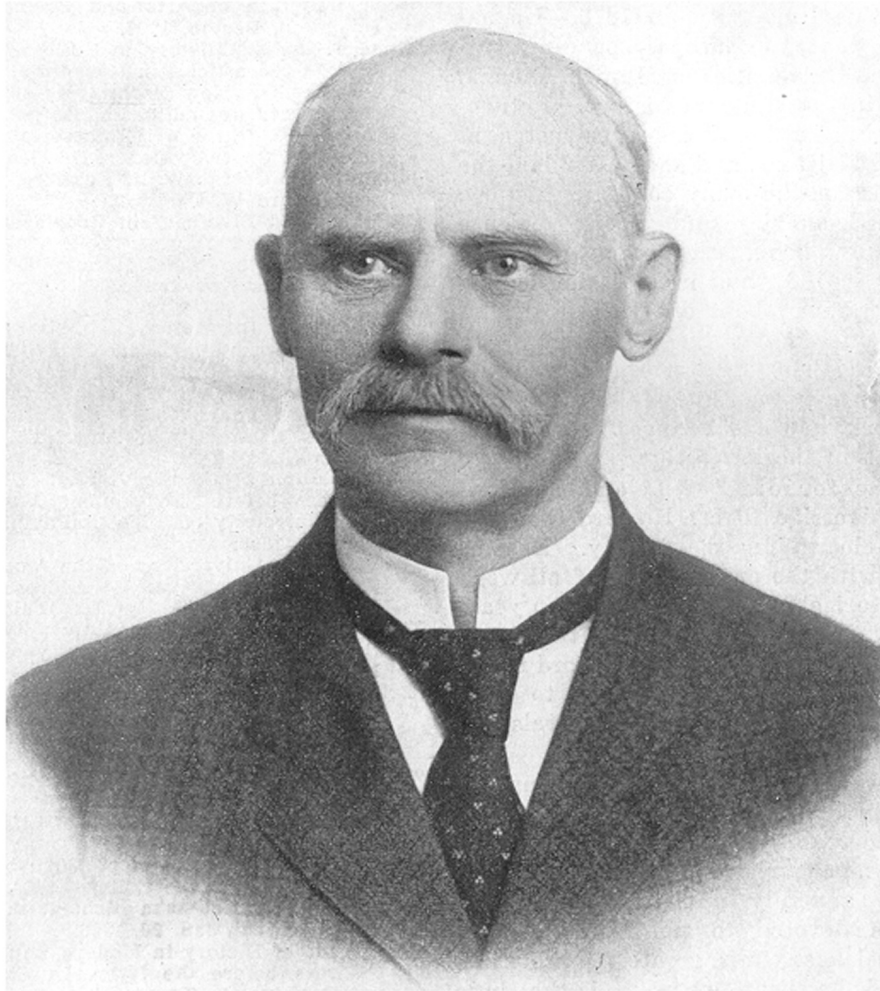


Figure 4.3. George Elliott Howard, circa 1907

Source: University Journal 4 (October 1907): 3.

The route by which Edward A. Ross and George E. Howard came to join the faculty at Nebraska after 1900 is a major saga that can only be outlined here. Ross was fired in late 1900 from his professorship at Leland Stanford University. The firing gained national attention and was seen by many as a major challenge to academic freedom in the United States (and Ross was so deeply affected by the event that when he became president of the American Sociological Society he organized an entire annual meeting around the theme of academic and intellectual freedom). At issue were Ross' views on Asian immigration, his support for the bi-metalist monetary policies of Nebraska's William Jennings Bryan, and his implied critique of the capitalist Leland Stanford. Outraged, Stanford's widow pressed David Starr Jordan, President of Leland Stanford University, to demand Ross' resignation. Further details of the event are provided in Schwendinger and Schwendinger (1974: 494-498) and Weinberg (1972: 35-55). For a particularly clear overview of the relevant political forces active at that time in the Midwest, see Nye (1951).

Upon Jordan's official acceptance in November 1900 of Ross' forced resignation from Stanford, bi-metalist forces at the University of Nebraska made virtually immediate room for Ross. At a meeting of the Board of Regents on December 12, 1900, Chancellor Benjamin Andrews (himself a victim in a



prior freedom of speech case involving his support of bi-metalism at Brown University) was:

authorized to negotiate with professor E.A. Ross of Leland Stanford Jr. University, with regard to lectures in this university on sociology for the remainder of this year or for the second semester of the present year.<sup>42</sup>

If Mrs. Stanford was unhappy with Ross, Andrews and bi-metalist Nebraskans welcomed him with open arms.

In the Schwendinger's (1974: 495) account of the history of American sociology, Ross' subsequent Nebraska years (1901-1906) are made to disappear in an alarming example of linguistic slight of hand, to wit:

Ross left Stanford and after a few years elsewhere ultimately received a position at the University of Wisconsin. (Emphasis added).

Ross (1936: 87), however, wrote fondly of his days in Lincoln, "My lustrum at Nebraska was happy, for three sons were born to us and all thrive." And, he liked the air, "Many a day I found that just to respire was intoxicating." Ross' Nebraska years came in the midst of his most productive and creative period. Julius Weinberg (1972:58) put it:

Three books were published by Ross during this period: Social Control: A Survey of the Foundations of Order, in 1901; Foundations of Sociology, in 1905; and Social Psychology, in 1908. These works contain his most significant contributions to the development of sociological thought in the United States.

Ross generously spread the intellectual enthusiasm of these landmark books among his students, colleagues, and friends in the wider community of Lincoln, Nebraska.

#### Ross, Community, and Sociological Jurisprudence

Edward A. Ross was a dynamic and social man, a "big tall Westerner with a sandy moustache and giant stride." Ross' activities extended well beyond the Nebraska campus, and included meetings of the Nebraska State Historical Society, presentations to such groups as the Lincoln Woman's Club, and teaching Sunday School classes.<sup>43</sup> Ross was also a regular participant in "town and gown" dining and discussion groups, one of which was especially significant for Pound's development of sociological jurisprudence.

Ross was a central figure in a dining group that he referred to as "a congenial Ten." It was here that Ross met Roscoe Pound and first influenced Pound's sociological development. Here was a friendly and fruitful setting for numerous discussions between Ross and Pound. Ross (1936: 89) wrote:

Brilliant fellow-member of a congenial Ten who dined together once a month was Roscoe Pound, then a supreme-court commissioner. Champion of judges and courts, he pounced on me whenever I swung at the current administration of justice. I insisted that the courts, in dealing with crime, were only social organs equipped with means and power for the purpose of protecting society from malefactors. Every time they turned loose a guilty man on technicalities they confessed incompetence. I did not imagine I was "making a dent" on him, but quietly he began to acquaint himself with the sociological view of law and courts. He worked out a series of masterly studies toward a Sociological Jurisprudence, which, however, has not yet seen the light.<sup>44</sup>

Pound was at the time not only a Supreme Court Commissioner, but was also Assistant Professor of Jurisprudence and taught in the Department of American History and Jurisprudence at the University of Nebraska. In his dinner discussions with fellow members of the "congenial Ten," Pound was particularly well prepared to present the views of a practical man of court tempered with the ideals of a polished academic.

Little additional information about these evening dinner discussions was discovered in the course of this project, but some retrospective insight into the social and intellectual scene in turn-of-the-century Lincoln can be gleaned from the letters of Henry F. Lewis, a businessman who corresponded with Ross in 1907 during Ross' first year at Wisconsin.<sup>45</sup> Lewis, a participant in the Lincoln social

whirl, admired Ross and wrote keeping Ross abreast of local news from Nebraska.

Lewis' updates to Ross reveal the existence of another group, called "The Round Table," in addition to the "congenial Ten," to which Ross belonged while in Lincoln. Shortly after after Ross left Nebraska, Pound was elected to "The Round Table" and George Howard, wrote Lewis, "could have been elected had he not declined to allow his name to be presented."<sup>46</sup>

Lewis also wrote about a group he called "the Club," but it is probable this was simply his designation for the "congenial Ten" mentioned by Ross. The intellectual orientation of this group, to which Ross, Pound, and Howard belonged, covered the range of topics in which Pound and Ross would have easily exchanged views about sociological perspectives.

Formal papers on social and economic issues were read at Saturday evening meetings of "the Club." Spirited discussion appears to have been the order of the day at these meetings (although Lewis reported that during one paper, "I think I slept soundly through most of the discussion, especially after [William George Langworthy] Taylor got hold of it"). Lewis looked forward, for example, to a presentation by George Howard, "We meet with [Fred Morrow] Fling next Saturday night and [George Elliott]

Howard leads and there will be something doing. He takes up the [Cesare] Lombroso theory of genius." "The Club" included George Howard and Roscoe Pound, but Howard resigned from the group after Pound went to Northwestern in the autumn of 1907.

Ross' departure from Lincoln took something essential from these groups. Wrote Lewis:

Your absence from the Round Table and the Club is often spoken of in a mournful way . . . . We no longer have in view the evenings, filled with jollity, good conversation, and general good cheer.<sup>47</sup>

In these informal, intellectual discussion groups, Roscoe Pound was introduced to sociology by a gregarious and convivial Edward Ross.

Joyce O. Hertzler (1979: 47-48), a Ross student who joined the Nebraska faculty in 1923, drew the following account of Pound's sociological activity at Nebraska during this period:

During this Ross epoch a new American sociological influence was germinating at this university. While not occurring within the department, it was nevertheless closely bound up with the general development of sociology under Professor Ross. We refer here to the sociological conception of jurisprudence being worked out by Dr. Roscoe Pound, a native son, who was first lecturer and then professor of Jurisprudence, and later (1903) dean of the College of Law. In a short monograph entitled A

New School of Jurists published in the "University Studies" for 1904, he emphasized the sterility of other schools of jurisprudence, and arrived at the thoroughly sociological conclusion that "law is a social institution."

The veracity of Hertzler's Johnny-come-lately account is warranted by Ross' personal pledge to review it and make it as "accurate and as realistic as possible."<sup>48</sup> Pound applied his own considerable resources to the insights he gained from discussions with Ross, and the result was the birth of American sociological jurisprudence.

Yet, the social, intellectual, and institutional milieu in which Pound formulated his sociological perspective included much more than private study and fortuitous dinner discussions, however convivial. The period from 1901-1907 caught Pound up in two distinctive and opposite social forces on the campus of the University of Nebraska. The first was a creative spirit of *communitas* (structurally facilitated in numerous ways on the pioneer campus) that cemented the ties between Ross and Pound. The second, opposite force, was the increasing, alienating bureaucratization of the University in which Pound, as Dean of the College of Law, was himself centrally involved. These dimensions of the Nebraska campus are examined below, in turn.

### Communitas and Liminality on the Nebraska Campus

At the turn of the century, academic life at the University of Nebraska enjoyed a robust vitality and, compared to today, was marked by an enviable sense of community and "communitas."<sup>49</sup> Edward A. Ross, Roscoe Pound, and others benefited from the momentum and excitement of intellectual and political debate to which they contributed and from which they drew inspiration and renewal. The creative climate of interdisciplinary exchange and intellectual ferment was in part structurally generated through standing patterns of ritual interaction that challenged the alienating forces of capitalism, sexism, bureaucratization, and the commodification of time, or what Mary Jo Deegan (1989b) calls the four "core codes" of everyday life in modern America. In this section, Deegan's theory of American ritual drama is employed to explicate the character of the campus community at Nebraska from 1900-1907.

Victor Turner (1969), to whose work Deegan's theory of American ritual drama owes an acknowledged debt, made reference to the standing patterns of ritual interaction by an especially unfortunate choice of term. Turner called such patterns "anti-structural," which erroneously suggests to unwary readers that these patterns are set in opposition to structure per se, and are thus themselves without

structure. In fact, ritual processes are permeated with structure, and could not proceed without it. What Turner, and Deegan, intend by the appellation "anti-structural" is identification of ritual components that are different from the usual, mundane, routine patterns or structures of everyday life.

The anti-structural aspect of ritual events is most fully developed during the "liminal" phase of ritual interaction. In Turner's world of non-Western tribal ritual, "liminality" refers to the topsy-turvy inversion of everyday rules of order and structure. For example, liminal rituals often reverse sex and class roles, or require the giving away of possessions that are highly coveted in everyday life. Ritual transport to -- and return from -- a liminal world that is "out of everyday time" and "out of everyday space" builds the bonds of *communitas* between ritual interactants. In Deegan's theory of twentieth century American ritual, ideally liminal experiences banish the everyday "core codes" of repression and oppression. Deegan concludes, however, that most American rituals are "flawed" because they typically incorporate rather than challenge or "play" with the core codes of everyday life. The basic features of everyday life in modern America are not turned topsy turvy in today's ritual interactions.



In her analysis, for example, of "Big Red," Nebraska football games (a modern ritual event that gives thousands of Nebraskans a sense of identity and belonging), Deegan unequivocally demonstrates that capitalism, sexism, bureaucracy, and the commodification of time permeate the event. For example, tickets to "the game" are expensive (thus preventing low income persons from attending), and the commercial benefit of "football Saturday" contributes materially (sometimes essentially) to the profitability of many Lincoln businesses. Women are excluded from "play" in football games, and are relegated to the "fun" of cheerleading. The bureaucratization of football is astounding, extending from the National Collegiate Athletic Association down to the elaborate system of recruiters, coaches, assistants, and trainers on the local campus. The "game" itself advances on the basis of complex, bureaucratically specified rules that are interpreted by "officials." In the lucrative, high-stakes world of televised Nebraska football, "game time" and the frequency and duration of "time outs" for commercial advertising are negotiated between the university bureaucracy and representatives of media conglomerates. The game itself is executed in a matrix of temporal dimensions, halves, quarters, and "time outs." Penalties are assessed for the "delay of game," a significant statistic is "time of

possession," and game strategy frequently involves not advancement of the ball, but "stopping the clock" versus "keeping the clock running." Many victories are secured in the final seconds by "letting the clock run out."

Despite the deep penetration of Nebraska football by the core codes of the mundane world, it is still experienced as "fun." This results because Nebraska football includes aspects exhibiting anti-structural tendencies. The gathering of thousands of people (typically costumed in "Big Red" outfits) in a specially constructed outdoor arena to cheer and stamp their feet, to "boo" at the "officials," and to be entertained by "marching bands" departs fairly radically from the work-a-day routines of most participants. Deegan astutely points out that because events such as Nebraska football are "fun" for many people who would otherwise be even more desperately alienated, it is difficult for sociological analysts to objectively evaluate Nebraska football and other flawed rituals without the reality and fear of institutionalized retribution.

To analyze flawed rituals is doubly dangerous. The analyst not only exposes those who thrive on alienation in order to preserve "what little bit of fun" they have in life, but also exhibits the bald perniciousness of vested capitalist and patriarchal interests in American society. A flawed ritual, such as Nebraska football, is thoroughly

contaminated with everyday structures and is not genuinely liminal. In the modern world, Deegan concludes that flawed rituals generate "fun" rather than "communitas."

"Fun" is enjoyable, but at a price. Fun does include sufficient anti-structural elements to "take us away" from daily cares, at least for the moment. And, "having fun together" does give a sense of identity with a group, and is highly valued by participants in "fun" events. Fun, however, unlike communitas, generates alienation in proportion to the degree that fun is achieved through greater and greater incorporation of the core codes of American everyday life. The price of fun is the negation of communitas. Fun events succeed in generating group identity by creating "in" and "out" groups, manifested most dramatically in football by the "winners" and "losers" of the game. Authentic liminality, however, transcends the core codes, resulting in "play" instead of "fun." When play is authentic, everyone is included, no one "loses." Liminal play results in communal inclusion that cuts across the divisions of caste, class, and sex. Liminal play is a source of community strength and revitalization. Fun, on the other hand, fractures society by defining and allocating group identities that are fundamentally grounded in alienation and exclusion.

Deegan's theory is particularly useful in positing a spectrum of ritual practices, from those that are deeply flawed and inherently alienating, on the one hand, to those that generate *communitas*, on the other. For the most part, social interaction in modern American society is conducted within an institutional framework characterized by the core codes of oppression and repression. Nonetheless, the degree to which these codes permeate specific ritual practices varies considerably, as Deegan's analyses clearly demonstrate. It is Deegan's pragmatic goal, having identified the nature of American rituals, to construct new rituals that eliminate (or at least reduce) the intrusion of the core codes, thus generating renewal and *communitas* in American society. For the study at hand, my purpose is more simply and directly served by using Deegan's general analysis to explicate the character of social interaction on the turn-of-the-century campus at the University of Nebraska.

The University of Nebraska was from the beginning a bureaucratic enterprise located in a patriarchal, capitalist society. Thus, it is not surprising that aspects of that society were (and are) reflected in the day-to-day operation of the University. At the turn of the century, however, the core codes of oppression and repression did not yet dominate campus life, with the result that many university social

patterns were far more anti-structural in nature and intent than is the case today. Below, several of these interactional patterns (and their liminal, anti-structural features) are identified and characterized.

The inventory below provides an empirical foundation for positing that the turn-of-the-century Nebraska campus exhibited a comparatively expansive facility for anti-structural liminality and the generation of *communitas*. This generous spirit of community and interdisciplinary exchange underlies the creative work produced by Edward A. Ross, Roscoe Pound, and other Nebraska scholars of their era. By the end of the first decade of the twentieth century, however, the forces of modernity splintered and alienated the component elements of the academy at Nebraska. Roscoe Pound's administrative frustration as Dean of the College of Law in 1905, for example, stands in strong contrast to his "play" as the unhampered youthful organizer of the Sem. Bot. (whose bureaucratic, hierarchical and exclusionary overtones were at least partially checked by the ritual inclusion of liminal irreverence for bureaucratic formality).

This observer concludes that the modern University of Nebraska has lost the capacity for communal interaction and anti-structural revelry revealed in the following examples. The sociological excitement and productivity of the Nebraska

campus in 1900 was not simply the fortuitous intersection of the careers of Ross, Pound, and Howard. Their work was embedded in a milieu that initially encouraged interdisciplinary exchange and offered numerous mechanisms for liminality and the generation of *communitas*. The anti-structural devices discussed below include: the student literary societies, campus convocations, Faculty Carnivals, the Graduate Club, and the proposal for an interdisciplinary School of the Social Sciences.

#### The Student-Organized Literary Societies

The replication of class and gender structures by sororities and fraternities as we know them today (Risman 1987) were initially resisted at Nebraska, and particularly so during the college socialization of Nebraska's early social scientists.<sup>50</sup> To provide social entertainment and intellectual enlightenment, students formed literary societies and scientific societies. Roscoe Pound's creative organization of a playful scientific society, the Seminarium Botanicum, has already been noted (Chapter 3). In addition, Pound and other Nebraska social science leaders, including George E. Howard and Amos G. Warner, were active participants in Nebraska's democratic, coeducational, student-generated alternative to the sexist and classist Greek-letter social fraternities.

In contrast to classroom instruction, the societies provided anti-structural opportunities for productive play. Students, rather than faculty, set the agendas. Liminal activities such as parties, singing, and make-believe dramatic play were regular features. The societies staged "competitive" events, such as debates, but often with only a handful of contestants so that all participants "won" something. The consequence of flawed performance during a society event was never an "F" on a report card, as might well result in the classroom. The societies gave students a supportive environment in which to learn from their mistakes.

The student-organized literary societies provided a forum for cultural activities, music recitals, intellectual debates, and socializing. Membership was open to all students. The social function of the literary societies, wrote Louise Pound (1905: 193), "has no undesirable features, involving no late hours, no demoralization of class work, and no undue expenditures."

The student literary societies complemented work in the classroom by providing what Louise Pound (1905: 193) called a "more natural world":

Concentration of the faculties, quick thinking, these are demanded by participation in the discussions of the class room; but however critical and attentive the audiences of the class

room, they never seem such real audiences as those faced in the programs of the literary society, nor can the discussion be so spontaneous or so much the student's own. Within the society hall is no atmosphere of the formal or the perfunctory, and no dominating figure of an instructor. Here is a more natural world, and one which offers in miniature real opportunities.

Louise Pound (1919: 57-58) further noted:

In the early days of the University, the "literary societies" were the chief centers of life outside the class-rooms . . . . The earliest literary society to be organized on the campus was the Palladian, founded in the autumn of 1871 . . . . The second literary society to be established was the Adelpian, which was formed in 1873 by the secession of some of its members from the Palladian. A moving spirit in the secession was George E. Howard, now one of the University's most honored professors . . . . It is of interest to recall that Professor Howard was not only a political and literary leader of his period but also a leading athlete, holding various college records in the types of athletics then in vogue.

Like Louise Pound (R. Pound 1957b), Howard combined athletic prowess with intellectual pursuit.

Roscoe Pound was an undergraduate member and president of the Union Society, yet another literary society, formed in 1877 (Caldwell 1902: 78).<sup>51</sup> Amos G. Warner, a Nebraska social scientist of national reputation, was an undergraduate member of the rival Palladian society.<sup>52</sup> Taken together, these societies were important facilitators of secondary socialization.



With reference to the functions of the societies, Louise Pound (1919: 60) observed:

The old-time literary societies gave to their members valuable experience. Not only did they provide social diversion but they gave to the students almost their only training in conducting public meetings, in self-govenment, and in acquiring self-possession before an audience.

She also noted (L. Pound 1905: 192), "the advantages offered by the literary society in the way of valuable training have been often and well demonstrated." At the least, the subsequent careers of Roscoe Pound (Union), George Howard (Adelphian), and Amos Warner (Palladian) -- not to mention Louise Pound's (Union) own accomplishments -- demonstrate the ample fulfillment of this latent function of the student-organized literary societies at Nebraska and other midwestern schools.<sup>53</sup> This was a period of youthful institutional experiment, and Roscoe Pound and his sisters were in its midst. The student literary and scientific societies reflected the early drive toward *communitas* at the University of Nebraska, and help explain why the school generated so many outstanding scholars during its early years.

### Campus Convocations

The Lincoln campus in the early 1900s was the setting for frequent addresses delivered by visiting speakers and resident faculty members on significant topics of contemporary interest. These typically weekly, all-campus convocations constituted a secularized extension of "chapel meetings" into the state university of the early twentieth century (the student newspaper employed the terms "chapel" and "convocation" interchangeably). The convocation was literally the "calling together the members" of the university community. Today's campus, by contrast, provides no structural mechanism for bringing the entire faculty and student body together on a regular basis.

Sponsored by the University, convocations were, nevertheless, anti-structural or "different" from regular classes in several ways, including: (a) students and faculty combined to form an audience that listened as equals, (b) attendance at convocations was motivated more by interest in the speakers and their ideas rather than by the coercion and the usual bureaucratic housekeeping of regular classes (i.e., registration, attendance, payment of fees, testing, grades, etc.), (c) the time set aside for convocations (while bureaucratically orchestrated) was a "special time" during which "ordinary," mundane classes were not scheduled, and (d) convocation programs were

occasionally devoted to student-led projects (such as promoting "fund raisers" for the College Settlement, discussed below) or discussion of campus-wide issues (such as plagiarism, also discussed below). (e) Finally, unlike regular classes, programs sometimes included musical performances, and addresses were often given by "outside" speakers as well as by local faculty members.

Representative visiting speakers during 1904-1906, for example, included the following:<sup>54</sup>

- W.N. Hayes, Assistant Secretary, U.S. Department of Agriculture
- R.W. Breckenridge, a leading Nebraska lawyer<sup>55</sup>
- The Reverend Anna Shaw, president of the National Woman's Suffrage Association
- Viceroy Quan Fang, a member of the Imperial Chinese Commission to the United States<sup>56</sup>
- Pundit Krishna, an educator from India
- G.S. Smith, a professor in the department of sociology at the University of Minnesota
- David Star Jordan, President of Leland Stanford University<sup>57</sup>

Visiting speakers provided an external, sometimes exotic perspective, and linked the Nebraska faculty and student body to a wider universe of discourse.

Topics addressed by Lincoln scholars included presentation of the results of current professorial research

and discussion of topical issues. Selected presentations made by Ross, Pound, and Howard are outlined below. First, however, it is noted that student activities and campus issues also found expression at convocations. Matters of local scope included, for example, student politics, activities of the College Settlement house, athletics, and academic honesty. In 1905, the convocation became a mechanism to raise and act upon the problem of plagiarism. This example is particularly instructive because it illustrates the close relationship that was still possible between the Chancellor, faculty, and students during this period.

#### A Communal Attack on Plagiarism, 1905

The virtually immediate and decisive campus response to a small but troublesome outbreak of plagiarism in 1905 exemplifies the coordinated action possible within a united academic community. In a spirit of *communitas* (rather than individualist or divisive constituent politics), administration, faculty, and students closed ranks to face what all recognized as a common threat to the integrity of the campus as a whole. This remarkable communal process began when Chancellor Benjamin Andrews delivered a blistering convocation address on January 17, 1905, lambasting a case of student dishonesty that had been

brought to his attention. Andrews' positive valorization of academic integrity may be gauged by his remark that:

I would rather see incendiarism than plagiarism, for the latter is the most serious crime that can be committed against the University."<sup>58</sup>

Student response to this challenge was dramatic, and the plagiarism incident of 1905 reflects scholarly values as well as communal cohesion in Lincoln at the turn of the century.

Chancellor Andrews spoke to the campus on Monday. By Thursday of that week students organized themselves to support the Chancellor's position and acted vigorously to stem future violations of academic integrity. The Daily Nebraskan reported:

A crowd which filled every seat in the chapel was on hand when President Hunter, of the Senior Class, called the mass meeting to order yesterday morning.<sup>59</sup>

At this meeting, Professor Fling was introduced to recapitulate remarks he made the previous day in his history class where cheating had been discovered. Fling urged that students must collectively accept responsibility for combating plagiarism. The executive and police powers of the university, he noted, could not alone remedy a situation

in which students must also assume moral obligations. Fling asserted:

The responsibility of this evil should be placed where it belongs, namely, upon the shoulders of the students"<sup>60</sup>

Directly on the heels of Fling's prologue, student leaders presented a plan that sternly denounced plagiarism and called for collective vigilance. They put the following propositions before the assembled students:

We, the students of the University of Nebraska, believing that the traditional attitude of some college students towards cheating is immoral, indefensible and a tremendous obstacle to the development of the noblest manhood and womanhood, profoundly convinced that the time has come to establish a higher and better standard in these matters amongst us, having in mass meeting assembled, this nineteenth day of January, 1905, resolve as follows:

1. That no code of student ethics ought to attempt to justify dishonest work of any kind.

2. That any student who will not work honestly and fairly should not be allowed to remain amongst us.

3. That we accept the responsibility of introducing this higher standard amongst us, will organize at once by classes to enforce it, and agree individually to inform the student committees to be established of any dishonest work that may come to our notice.

4. That these resolutions be printed and a copy placed in the hands of every student in the University.<sup>61</sup>

The above resolutions were adopted "immediately and without a dissenting voice."<sup>62</sup> Within days (acting through the structural mechanism of the all-campus convocation rather than bureaucratic committees or administrative edict) administrators, faculty, and students cooperatively confronted a common peril. Without an established sense of *communitas*, and without the anti-structural forum of the convocation, it is unlikely that such speedy, unanimous, and positive results could have obtained.

#### The Convocation Addresses of Pound, Ross, and Howard

From 1901 to 1906, Roscoe Pound, Edward A. Ross, and to a lesser extent, George E. Howard, took their respective turns to address students and colleagues at campus-wide convocations. Anti-structurally, their talks were literally "gifts" to the University community. Their presentations (together with lectures by their colleagues on such topics as advances in optical physics, new interpretations of Latin classics, and orations on English history), were announced days in advance in the Daily Nebraskan. The major points of their speeches appeared in subsequent issues of the student newspaper. The list of topics on which Ross, Pound, and Howard spoke reveals the interweaving of timely subjects, personal research interests, and commitment to public issues.

The sequence of presentations was as follows:<sup>63</sup>

Ross, "Recent and Pending Legislation by Congress," (1901).<sup>64</sup>

Ross, "Chinese Immigration," (December 1901).

Pound, "The Nature of International Law in Relation to Recent Developments in Panama," (December 1903).

Ross, "The Open and Closed Shop," (March 1904).

Ross, "The War Against Political Corruption," (October 1904).

Pound, "The Legal Aspect of the Russians Firing upon the British Fishing Fleet," (October 1904).

Pound, "The Common Law," (November 1905).<sup>65</sup>

Pound, "The Congress of Uniform Divorce Laws," (March 1906).

Ross, "Some Causes Underlying the Deplorable Condition of Modern Society," (April 1906).

Pound, "On Causes of Dissatisfaction with the Administration of Justice," (May 1906).

Howard, "Democracy and Genius," (October 1906).

Convocation addresses by resident, sociologically astute faculty members presented Nebraska students with high-level discussions of intellectual work then receiving major national attention. The convocations also provided one of several "institutionally reflexive" (Goffman 1977/1987) channels through which Ross, Pound, and later Howard (although administratively housed in three different



departments) could keep abreast of new developments in each other's ideas. The Daily Nebraskan's accounts of these and other addresses reflect a campus atmosphere that turned with some frequency to "cutting edge" issues and developments in the social sciences.

Ross, Pound, and Howard were leaders of national stature who willingly took time to share their insights with local audiences of students and colleagues. Characteristic presentations are outlined below to introduce the sociological ideas and issues then under discussion on the Nebraska campus by "local" scholars. Specifically summarized are: Ross's addresses on "immigration" and "society and morality;" Pound and Howard's analyses of "divorce;" Pound's critique of "justice;" and Howard's observations on "society and genius."

#### (1) Ross on Chinese Immigration

In his second convocation address at Nebraska, in December 1901, Ross spoke in detail on "the Chinese question." Ross' public argument for restrictions on Chinese immigration are particularly significant. His views on this topic were integrally linked to his firing from Leland Stanford Jr. University in 1900. Ross had severely critiqued the use of imported Chinese laborers (who accepted low wages) to execute large-scale capitalist construction

projects in the United States. Ross admired the Chinese, and considered the Chinese superior to Europeans in many ways (particularly with reference to industry and physical resilience). This, combined with Chinese "willingness" to work for lower wages than most Americans, led Ross to conclude that unrestricted Asian immigration would have the following dire result:

The Americans would become man-stifled by a flood of Chinese. The wages of the American laborer would be reduced and therefore the standard of living would be lowered. These Chinese would increase more rapidly than in China because of more favorable conditions. Americans would be discouraged by the prospects and rear fewer children and so the bulk of the population would soon be Chinese. The struggle for existence would become bitter . . . . Our present ideas of manhood would have to be given up.

Ross continued:

The scientific view of the question doesn't say whether the thing is right or wrong but points out the results of Chinese immigration. If you don't believe these things you are justified in letting the Chinese in. A restriction on their immigration is not a [reaction] of selfishness. It is not only a question of right and wrong to Americans or Chinese but it is for the welfare of the human race that we maintain these standards which we now have. The time will come when the orient will be occidentalized. When the people of the orient accept the high ideals and standards of the occident it will be possible to break down the barriers and allow all the human race to mingle freely.<sup>66</sup>

Ross' unreflexive, value-laden assertion that "the scientific view" is ethically neutral strikes a particularly transparent and too-familiar modern chord.<sup>67</sup> Ross was, at the least, a controversial thinker whose campus talks enlivened the atmosphere of intellectual give and take.

## (2) Pound, Howard, and Divorce

At a campus convocation in March 1906, Pound reported on his activities as a Nebraska delegate (appointed by the state Governor) to the Congress on Uniform Divorce Laws. The Congress was a major national effort, called together in Philadelphia, to explore the possibility of legal remedies to what was then called "the divorce problem" (for further discussion, see National Congress on Uniform Divorce Laws 1906; O'Neill 1973; Ball Forthcoming a). The entire Congress, reported Pound, agreed that the marriage laws in the United States needed reform and standardization from state to state. Such reform was compatible with Pound's subsequent call for coordinated action to reduce cynicism and disrespect for law.

Pound made a special point in his convocation report to remind students and colleagues of the timely and national significance of George Howard's sociological work on the institution of marriage:

"In every instance," said he, "Dr. Howard's work on marriage was referred to as the authority. It was considered by every member present to be the first of all works on that subject."<sup>68</sup>

Pound's reference is to Howard's landmark, three-volume study, A History of Matrimonial Institutions, published by the University of Chicago Press in 1904. Pound did not exaggerate, Howard's work was genuinely regarded in many quarters as the leading scholarly analysis of marriage and divorce (O'Neill 1967; Ball Forthcoming a).

Howard was an interdisciplinarian who combined his interest in the historical evolution of social institutions (such as marriage) with an interest in law (he minored in law at Nebraska and studied law in Europe). Howard's stance on divorce was considered radical by many, as he opposed most of the clergy in his advocacy of the idea that divorce was not per se an "evil" (see especially, Howard 1909).

Howard was deeply interested in the legal aspects of marriage and divorce, and to that end addressed the Nebraska Bar Association in November 1905 on "The Problem of Uniform Divorce Laws in the United States." While not a campus convocation address, the substance of Howard's remarks were nevertheless reported in the Daily Nebraskan.<sup>69</sup> Howard's topic was central to Dean Pound's subsequent work as the

Nebraska delegate to the National Congress on Uniform Divorce Laws in 1906.

Howard asserted to the members of Nebraska Bar Association (and indirectly to the readers of the Daily Nebraskan) that "it is fallacious to represent the institution of divorce as in itself a menace to social morality". Succinctly, he concluded that:

The fundamental causes of divorce lie far beyond the reach of the statute-maker. They are rooted deeply in the imperfections of human nature and the social system, particularly in false sentiments regarding marriage and the family. Beyond question the chief cause of divorce is bad marriage laws and bad marriages. The conviction is deepening that for the wise reformer, who would elevate and protect the family, the center of the problem is marriage and not divorce.<sup>70</sup>

Pound and Howard shared overlapping professional interests in law and sociology, and with Ross enjoyed a sense of pragmatic yet moral social purpose. Pound's admiration for Howard's sociological and legal acumen evidenced itself in Pound's convocation report and was later institutionalized in 1906 when Pound offered -- and Howard accepted -- a joint appointment on the College of Law faculty.

### (3) Pound on Justice

If Howard brought legal insight to bear on sociological issues, Pound increasingly adopted a sociological perspective on law. Nebraska students were treated in April 1906 to a preview of Pound's radical, sociologically-informed address to the American Bar Association on "The Causes of Popular Dissatisfaction with the Administration of Justice."<sup>71</sup> The Daily Nebraskan report outlined the major points that Pound later covered more systematically and methodically in August that same year in his revolutionary remarks at the American Bar Association meetings in Minneapolis (Pound 1906a). He charged the bar with socially harmful conservatism. His critique was so effective and deeply stinging that fifty years later the consequences of his address were still under assessment by legal scholars (Harding 1957).

In Pound's view, widespread public dissatisfaction with judicial decisions was harmful because people then became distrustful and cynical of the entire system of law, and this threatened the very fabric of civilized life. Causes of the public's dissatisfaction included: (a) "the inefficiency of the judicial organization," (b) "indifference of the public towards the judiciary," (c) the antagonism between individualism "and the spirit of the law," and (d) "the influence of politics upon the execution

of the laws."<sup>72</sup> In assessing blame for the growing crisis of confidence in the legal system, Pound assigned partial responsibility to members of the public, but he also indicted the legal profession per se -- and this was a bombshell, dropped by the first university law professor to address the American Bar Association.

Pound presented a reflexive and radical critique, charging that "the mechanical operation of the law" is among the primary causes of popular dissatisfaction. This proposition was a central element in Pound's evolving conception of sociological jurisprudence. According to Pound's thesis, the law must not act "mechanically," but responsively -- the law must be sensitive to social change, social scientific data, and social needs. If the judicial system is not socially responsive, he concluded, then members of the bar must bear responsibility for having increased the general level of cynicism in the populace.

#### (4) Ross on Society and Morality

During his lustrum at Nebraska, Edward A. Ross developed a major social critique of modern morality. This work culminated in Ross' (1907) his widely read book, Sin and Society: An Analysis of Latter-Day Iniquity. His critical, politically progressive ideas were warmly received in influential circles, a fact evidenced by a letter from

President Theodore Roosevelt that serves as the preface to Sin and Society. Students at Nebraska were privileged to hear Ross speak in classes and convocations, and to read about his ideas in the Daily Nebraskan as his position on individual and public morality evolved.

As early as 1904, Ross spoke on the nature of political corruption at a campus convocation. Corruption, he held, is not simply a straightforward matter of bribes and payoffs. The techniques of corrupt control vary with the situation and the interests of the types of people dealt with:

the giving of picnics to workingmen, the promising of good offices to inferior men, the threats of taking away franchises and the giving of preference to different firms are some of the methods used.<sup>73</sup>

Ross named three factors as the fundamental causes of corruption, specifically, (1) "the rise of monopolistic services," (2) "the rise of the commercial spirit," and (3) "the prevalence of wrong political ideas."<sup>74</sup>

The following year, 1905, Ross' ideas appeared in an article titled "New Varieties of Sin" in the May issue of the Atlantic Monthly and the thrust of the article appeared in a summary published in the Daily Nebraskan. The student paper highlighted Ross' premise, "that the sinful heart is the same, but sin changes as society develops."<sup>75</sup> In Ross'



view, social advance (specifically, increased social interdependence and the rise of the state) made possible new forms of wrongdoing. These new varieties of sin, Ross asserted, were not appropriately stigmatized:

The man who picks pockets with railway rebates, murders with an adulteration instead of a bludgeon, burglarizes with a 'rake off' instead of jimmy, does not feel on his brow the brand of a malefactor.<sup>76</sup>

Modern sins, concluded Ross, are not viewed as repulsive, they lack "the familiar tokens of guilt." This occurs, in part, because modern evils are often seen as "impersonal" acts.<sup>77</sup>

Nebraska students were well versed on the themes discussed in what would be Ross's final convocation appearance in April 1906.<sup>78</sup> Ross' search for the "causes underlying the deplorable condition of modern society" led him to portray avaricious individuals in a society characterized by a monochromatic value system:

Today manhood sells itself for gold. Everything is judged according to a money standard of value. Where this is the case, true worth is sacrificed and morality must suffer.<sup>79</sup>

Thus Ross, the sociologist, underscored the complexity of reciprocal relations between individuals and social values.

In Ross' system, the deplorable condition of modern society is laid firmly at the doorstep of "the greed of the individual." Wise social reformers, therefore, must become attuned to this fact or else see meaningful social reform constantly subverted by the individual money-mad in every class who urge "reform" only for their own benefit.<sup>80</sup> Later in May, Ross extended his comments, speaking on "the Graduates of Sin" at a "well attended" evening lecture off-campus at Trinity Church in Lincoln.<sup>81</sup>

#### (5) Howard on Genius

After his return to Nebraska, George E. Howard first took the convocation podium in the autumn of 1906, after Ross' departure for Wisconsin. Howard, who was originally appointed Professor of Institutional History, was now Professor and Head of Political Science and Sociology. In his first major address to the campus in his official role as sociologist, Howard explored the relationship between society and genius in what the Daily Nebraskan called "a very interesting address"<sup>82</sup>

Howard argued that native talent for genius may be inherited, as Francis Galton proposed, but that society -- in large part through the institutional organization and provision of education -- realizes the potential of the intellect. He admitted that intellectual ability may be

genetically evenly distributed in every population. Nonetheless, his sociological colors flying, he asserted that it is still the case that "genius is made, not born."<sup>83</sup>

Howard recounted advances in technology during the previous fifty years, advances that many assumed to flow naturally from an inexhaustible well of individual inventors. He then warned against the complacency of this assumption, chastising those who greeted each "announcement of new inventions . . . with almost child-like faith."<sup>84</sup> He proposed, to the contrary, that:

The X-ray, the phonograph, the telephone and telegraph are but devices of the human intellect striving to give expression to latent physical forces."<sup>85</sup>

In Howard's view, the socially organized conditions for promoting intellect must be provided and protected if such intellectual expression, now taken for granted, is to continue. Citing an example that rings with clarity in the 1980s, Howard observed:

Witness the rise of Japan. It is not the difference in inherited talent, but in education which accounts for the difference in expression of genius."<sup>86</sup>

Thus, he concluded:

It is the mission of democracy to set free the latent genius and energies of four-fifths of humanity, to remove the yoke of bondage from all classes and permit men to become equals.<sup>87</sup>

Howard promulgated an anti-structural message of the first order and his sociological analysis suggested a pragmatic action: social organization for universal education.

The themes of morality and progressive pragmatism were frequently linked from 1900-1907 in university convocations, campus debates, editorials and letters in the Daily Nebraskan, and in classroom discussions. The purposeful cultivation of genius and the standardization of divorce law, for Howard; the reformation of the legal system, for Pound; and the correction of academic dishonesty, for the faculty and students at the University of Nebraska, were fundamentally social and moral issues. Likewise, Edward A. Ross underscored the moral foundations of social concerns. The pages of the Daily Nebraskan reveal a faculty and student body vitally interested in pragmatic, socially responsive reform based upon scientific analyses, high moral principle, and a deep sense of mutual cooperation. This spin on the intellectual currents of campus life was materially facilitated by the anti-structural device of all-campus convocations and the sense of *communitas* it helped to generate.

### The Faculty Carnivals, 1903-1905

From 1903-1905, the University community witnessed three extraordinary, anti-structural "Faculty Carnivals." They are especially interesting to sociologists because of Edward A. Ross' prominent participation. The "Carnivals" have no counterpart on today's Nebraska campus, and, given Ross' role, are described below at length. Years earlier, the premier issue of the Nebraskan editorialized in 1892 that a western university like Nebraska wasn't worth attending unless it was "lively." The Carnivals met this criterion in full.

Starting in 1903, several of the male faculty members -- including Roscoe Pound and Edward A. Ross -- participated in annual benefits for the College Settlement, a "cultural outreach" program of the University that depended on "fund raisers" and individual subscriptions for support.<sup>88</sup> In 1904, the female faculty members also joined in. C.E. Prevey, a part-time sociology instructor, was superintendent of the Settlement -- but there is no record that the apparently serious-minded Prevey took part in the high jinks described below.<sup>89</sup> All students were encouraged to purchase tickets (25 cents general admission, 50 cents reserved seating) to witness the Faculty Athletic Carnival of 1903, an event organized by Professor Caldwell who was then treasurer for the College Settlement fund. The 1903 event

was vigorously promoted by the student newspaper. To further advertise the event, a campus convocation period "was devoted to stirring up enthusiasm for the Faculty Athletic Carnival"<sup>90</sup>

The 1903 Carnival exhibited the classic characteristics of anti-structures that reverse the rules and roles of everyday life. In this instance, staid and respected members of the university faculty presented themselves for the amusement and cat calls of the students. Student "cheering" and "roasting" of favorite faculty members was specifically encouraged by the Daily Nebraskan:

Students should not neglect this opportunity to make themselves solid with the faculty. Any opportune and conspicuous applause will be greatly appreciated, if rightly directed, and a megaphone will prove useful in reaching the right person. And at the same time another kind of an opportunity will be presented that should not be neglected. If you have any grudge against any member of the faculty -- we all have -- you will have an opportunity to vent your feelings. Whenever one of them falls in some dismal fashion you can turn loose and roast him properly, as they have often done to you.<sup>91</sup>

By encouraging students to participate in this fashion, the student paper emphasized student-faculty differences, but within the context of a transitory, liminal episode resulting ultimately in greater *communitas*.

Other features that set the Carnival apart from everyday life included the voluntary performance of faculty members without being paid to do so (a violation of the bureaucratic-capitalist ethic). Originally scheduled for a Saturday, the Carnival was postponed due to bad weather and eventually took place on a Friday afternoon when classes were normally scheduled (a violation of bureaucratic time management). Several faculty members appeared in ludicrous dress, participated in children's games, and were subjected to peels of laughter from the students. Silly -- rather than seriously competitive -- behavior was the order of the day. Esteemed professors acting the fool, and students openly and vigorously razzing their professors -- here are prime examples of liminal inversion.

Simultaneously, the Carnival retained certain features of the everyday world. For example, students still watched while professors took center stage, and students still paid -- just as they paid tuition -- to watch. Divisions between faculty and student roles (an hierarchical structure) were maintained; payment of money was required to attend (a potentially exclusionary device, even when ticket prices were seemingly nominal); and class distinctions internal to the student body were spatially preserved by offering higher and lower priced seating.

The mix of structural and anti-structural features in modern ritual events complicates the task of sociological analysis. In the case at hand, for example, the admission fee introduced class distinctions, yet the purpose of the event was generalized, voluntary backing for the College Settlement, a project that enjoyed popular, joint support by faculty and students. (The College Settlement, although its founders initially had ambitious aims (cf., The Courier 3 May 1902: 1), was at best a pale reflection of sociologist Jane Addams' Hull-House in Chicago (Addams 1910; Deegan 1988)). "Buying a ticket" in a class context was simultaneously "giving away" one's resources in a noncapitalist fashion. Simultaneously, the College Settlement, conceived as an "outreach" program to the culturally and economically "disadvantaged," paradoxically identified and reified class divisions in the larger everyday world. And on yet another dimension, the idea that the campus community and the local urban community could (and did) actively interact at the grass roots level of the College Settlement manifested a progressive ideal long since lost in Lincoln (for a short-lived exception, see Harding's (1974) discussion of the NOVA program). The complexity of "charity" efforts resists monodimensional explication.

In 1903, the faculty organized to present and participate in a number of athletic events for the Carnival,



including: gymnastic demonstrations, a baseball game, races of various sorts (including: foot, obstacle, walking, wheelbarrow, hobby horse and sack races), juggling, horsemanship exhibition, hammer-throw, and a football game. At least fifty faculty members signed up to participate.<sup>92</sup> The scheduled list of faculty athletes included Roscoe Pound and featured a special contest in which Edward A. Ross played a delightful part.

The Daily Nebraskan piqued student interest in the upcoming event with the cryptic note that "a hammer throw has been arranged . . . between the David and Goliath of the faculty -- whoever they may be."<sup>93</sup> The contestants' identities were soon revealed, however: Professors E.A. Ross and H.W. Caldwell:

Perhaps the most exciting events of the meet [will be] the hammer-throw and the shot-put contests between Professors Ross and Caldwell. While both of these gentlemen are reticent in their statements, each modestly states that he expects to win.<sup>94</sup>

Student newspaper coverage was frequently tongue-in-cheek, demonstrating a sense of playfulness and collegiality among the student reporters and their professors. Published announcements appraised the campus of each episode in the highly touted "rivalry" between Ross and Caldwell. The Daily Nebraskan observed:

It is said that Professor Ross is taking undue advantage of Professor Caldwell in preparing for the hammer-throw next Saturday, due to the fact that he lives out in the suburbs, hence can practice unobserved. Perhaps, however, he realizes that the preponderance rests so greatly with his opponent than any little scheme of this kind ought not to be laid up against him.<sup>95</sup>

Writers inflated the professorial encounter between Ross and Caldwell into a contest of epic proportion. Historians in years to come, one student quipped, would no doubt "ponder over piles of manuscript and volumes, trying to determine . . . whether the instrument used by Prof. Ross in the shot-put was really lighter or not than that used by Prof. Caldwell"<sup>96</sup>

The Faculty Carnival was postponed due to inclement weather. To maintain interest in the interval, the paper trumped up various "disputes":

One small dispute has entered in to disturb matters. Professor Caldwell has been reading up some musty volumes on physical geography and has found grounds for protest against Dr. Ross in the hammer-throw. He claims that Dr. Ross has the advantage of him in altitude, as in hurling the instrument at his height the atmospheric pressure is less, and that consequently it will go farther than it would if thrown from a point nearer the ground where a denser medium prevails.<sup>97</sup>

Good-humored rivalry reportedly mounted as the Carnival date finally approached:

Much speculation has been aroused over the hammer-throw, but all concern has been set at ease by the issuing of an official bulletin signed by Professor Caldwell and Dr. Ross that it will certainly take place. In regard to betting on this event, Professor Caldwell has expressed his views very emphatically. He feels that it is his moral duty to rule out betting, permitting it under no circumstances unless all bets are made in his favor. Dr. Ross thinks that this is a good assurance that there will be no betting.<sup>98</sup>

On the day of the Carnival, heralded as "the scene of a noble, grand, imposing pageant," a final promotion of the long anticipated Ross-Caldwell contest appeared in the Daily Nebraskan:

Wire netting will be stretched along in front of the grandstand to prevent any of the spectators being decapitated through an error in judgment on the part of one of the contestants in directing his instrument. An account of this great event will be incorporated in the next edition of Professor Caldwell's "History of the United States," and future historians, in reading this account will doubtless wonder if the witness of this event was entirely unbiased.<sup>99</sup>

The Carnival eventually unfolded on a Friday afternoon, November 13, 1903. Many events were scheduled, and -- in addition to the hammer-throw -- it was announced that Ross would also participate in a weight guessing contest.<sup>100</sup> The Daily Nebraskan reported details of the Carnival the following day, specifically noting Ross' participation:

At the south end of the bleachers Dr. Ross had a pair of scales and offered to guess any one's weight within ten pounds for a dime or money refunded.<sup>101</sup>

The long awaited hammer-throw took place at halftime during the faculty football game, and was reported with gusto:

Professor Caldwell was dressed in short trousers and as he marched down the field with Professor Ross the contrast was, well, it simply was -----. The crowd went into convulsions from thence to spasms and then stopped for the lack of anything else into which they might go.

Professor Ross threw first, the 12-pound hammer, and made a good throw and the friends of Professor Caldwell were beginning to fear for the outcome. But he was equal to it -- he had a set of hammers of his own, and he picked up the 12-pound one and twirling around his head as if it were a feather he threw it almost off the field. Professor Ross then tried hard on the 18-pound hammer, but the result was the same.

Finally they came to the heavy weight. Professor Ross threw an 80-pound hammer and Professor Caldwell had a 200-pound one brought onto the field. Even in this throw Prof. Caldwell completely distanced his tall opponent and this closed the contest.<sup>102</sup>

As the student writer predicted, this historian indeed wonders about the "official weight" of Caldwell's hammers.

Roscoe Pound's anticipated participation was touted less dramatically, but received the attention of Daily Nebraskan reporters nonetheless:

There will be a large number of races. Dr. Pound and Professor Taylor will raise clouds of dust in a madcap chase down the field to the goal post, and according to the present arrangements, the first over the line will be declared the winner. They will go around the grounds twice and then proceed to fight it with wheelbarrows.<sup>103</sup>

Pound also played the right-end position on one of the two football teams. His teammates included long-time colleague, Frederic Clements, then of the Botany Department. The football game featured considerable silliness, including the appearance of "Doctor Chase," the game physician, "who had a kit of tools consisting of a long rusty saw and a pair of bellows" whose "services were often needed"<sup>104</sup> Pound scored a touchdown, but it was disallowed (as was the goal made by the other team), and the game ended eventually in a draw, a *communitas* resolution.<sup>105</sup>

The faculty effort was considered a success. The student newspaper reported that although the weather was "a little sharp for the spectators," nonetheless "a good crowd was in attendance."<sup>106</sup> The Carnival raised \$285, or approximately 40% of the previous year's budget for the College Settlement.<sup>107</sup>

With considerable justification, the Daily Nebraskan concluded its report on the Faculty Athletic Carnival with this observation:

In every respect it was one of the most unique events that has ever been held on the University grounds, and will be long remembered most pleasantly by all who witnessed it.<sup>108</sup>

Whereas the images of E.A. Ross straining at the hammer-throw and Roscoe Pound sprinting down the football field -- in all probability pursued by "Doctor Chase" with his saws and bellows -- are genuinely unique, the participation and leadership of Ross and Pound in cooperative projects was a characteristic feature of their academic and professional comportment. Their sense of communal spirit and ability to generate patterns of collegiality took many forms during their years on the faculty at the University of Nebraska.

Faculty Carnivals to raise money for the College Settlement House were again held in 1904, and -- for the last time -- in 1905. The 1904 event was billed as the "University Faculty Circus and United Hippodrome."<sup>109</sup> Ross and Pound again participated. Ross captained a tug-of-war team and Pound again played the right-end position on a football team. More than seventy faculty participated. Most were men, but they were joined this year by at least eight women. The central feature of the Carnival was an elaborate "cavalcade and wild west show" with more than thirty riders, complete with an "exciting" stagecoach chase.

The show was again declared a financial success, raising about \$350.<sup>110</sup>

The last Carnival, the "Faculty Foolishness" of 1905, was also a large-scale extravaganza, again featuring a cavalry cavalcade. The governor of Nebraska took part, playing an exhibition horseshoe match, and a dozen faculty were put through an apparently humorous exhibition military drill. Pound's probable participation in the annual football game, and perhaps the "drill" exhibition, were not reported in the Daily Nebraskan, but Ross made a memorable appearance as leader of the "faculty band":

Close on their trail followed the Faculty band of several pieces headed by that peerless leader, Prof. Ross. Just what kinds of instruments they played is not known. The like of them has never been seen or heard in musical circles before -- and probably never will be again. But the audience enjoyed seeing and hearing the band nevertheless. Some people even boasted of having recognized the various airs the band played and these were almost wild in demonstrating their appreciation of the performance.<sup>111</sup>

Thus ended the last faculty Carnival at the University of Nebraska.

Coinciding with Ross' departure for Wisconsin, the "Faculty Foolishness" was given up during 1906-1907. The death knell of the Carnivals was a bureaucratic pronouncement. According to the College Settlement Board,

"it was felt that it [the Faculty Carnival] had outlived its days of greatest returns both from the standpoint of entertainment and finances."<sup>112</sup> More likely, the "foolishness" did not meet with full approval from those who saw the College Settlement as a beacon of high cultural and religious values. That theme had a long history at Nebraska, and a 1901 Daily Nebraskan editorial put it thus, the College Settlement:

extends the benefits of the University to those who are unable to attend. It reaches a class that needs the uplifting influence of college culture.<sup>113</sup>

Somewhat later, in 1904, a faculty member, Mr. Arbuthnot, spoke at convocation, noting, "In respect to the cultural side of life, . . . the Settlement stands in the front rank."<sup>114</sup> Given such sentiment, it is not difficult to postulate that the raucous doings of the Carnival offended at least a few who considered themselves, or at least the mission of the Settlement, "more cultured."

Perhaps too the novelty of the annual Carnival did wear thin, although this appears unlikely given the enthusiastic accounts in the Daily Nebraskan -- and it is also clear that the Carnivals were proven "money raisers." Whatever the explanation, the College Settlement Board, in its subsequent search for a fund raising enterprise, engaged a radically



different type of entertainment: a traveling troupe of Swedish folk dancers.<sup>115</sup> The three-year era of Faculty Carnivals was over.

Without the Carnivals, the College Settlement program became less integrated with the ongoing life of the campus and this -- given the applicability of Deegan's thesis -- accounts in part for the subsequent decline of the Settlement itself. In fact, the Settlement suspended operations in 1908 (Woods and Kennedy 1911: 317). During the life of the Carnivals, however, bonding within the faculty and the campus community generally was undoubtedly enhanced, reinforcing the cooperative atmosphere in which Pound, Ross, and their colleagues worked at the University of Nebraska.

#### The University of Nebraska Graduate Club

Locally-generated interdisciplinary discussions took place in Lincoln in the Graduate Club. Although this group was one of several intellectual/discussion groups in Lincoln, the Graduate Club specifically required a college degree and affiliation with the University of Nebraska for membership. "A graduate of any college, if connected to the university, could become a member" of the Graduate Club (Caldwell 1902: 79). These requirements were exclusionary, on the one hand, but there is, on the other hand, no

effective anti-structural mechanism today that brings faculty and graduate students together across disciplinary boundaries for periodic evenings of serious, open-ended discussion. The Graduate Club featured presentations by resident faculty members and these were announced, together with invitations to all graduate students and faculty, in the Daily Nebraskan. At the turn of the century, individually addressed invitations were also sent to each member, announcing the place (typically a member's home) and time of the next meeting.<sup>116</sup>

In addition to meetings, the group sponsored a scholarly publication, the Graduate Bulletin, and issued three numbers from 1900-1902. In the spring of 1901, the Graduate Club met at the home of A. Ross Hill to hear the report of the publications committee and elect new officers. Edward A. Ross was elected to the Bulletin's three-person editorial board.<sup>117</sup>

The Daily Nebraskan reported in 1902 that Ross and Pound were co-presenters on the topic of "Recent Development and Tendencies in Ethical Thought." The account noted:

Three different phases of the subject stated above were taken up at this meeting. The first was that of jurisprudence and was very ably discussed by Dr. Pound. Dr. Ross then spoke on the "Relation of Society to Ethical Thought."  
 . . . Besides the regular program, some business was transacted and a social hour was enjoyed by the members present.<sup>118</sup>

In the following years, Ross presented at least two additional papers, "A Sociological Perspective on the Russo-Japanese War," in 1904, and "The Coming Mandarinate," in 1906.<sup>119</sup> The Graduate Club was an anti-structural device that reversed day-to-day educational practice on the campus. Bureaucratically-established departmental lines were dissolved. The level of discourse was accelerated by banishing undergraduates (a simultaneously anti-structural and exclusionary move). The participants migrated from the campus to a member's home where they were welcomed as guests and treated to refreshments of the palate as well as the intellect. In such a gathering, most likely, grew the idea of a School of the Social Sciences.

#### A School of the Social Sciences, 1905

The complex interweaving of mundane and anti-structural elements is well illustrated in the faculty proposal for a School of the Social Sciences at the University of Nebraska. This proposal took final shape in a series of faculty meetings in April 1905. Such meetings, while often devoted to bureaucratic issues, also had communal aspects and effected regular contact between members of the University's relatively small faculty. For example, a faculty meeting in February 1905 found Roscoe Pound in the midst of a deeply personal and

interdisciplinary company of scholars. Included among the thirty-three faculty members in attendance were: Roscoe Pound, Louise Pound (his sister and an Instructor in English) Charles Bessey (his former botany professor), George Howard (admired colleague and long-time friend of the Pound family), E.A. Ross (Pound's sociological sponsor), and Frederic Clements (the co-author of Pound's doctoral dissertation).<sup>120</sup> In such a group, one could feel "at home."

In 1905, at the height of Nebraska's newly found sociological potential, the faculty conceived and approved an innovative, integrative, progressive plan to re-organize and further strengthen the social sciences at the University of Nebraska. On April 10, 1905, sixteen faculty members of the College of Literature, Science and the Arts, including: Bessey, Clements, Howard, Pound, and Ross, met to discuss a recommendation to establish a School of the Social Sciences. Following their deliberations, "Dr. Bessey moved that this Faculty recommend to the Chancellor and the Board of Regents the establishment of a School of the Social Sciences as outlined. Motion carried."<sup>121</sup>

Having approved the School of the Social Sciences in principle, the faculty took up, in turn, the separate programs of study to be housed within the new school. Before adjourning, the faculty approved the first course of

study in the new school, a Journalism program that emphasized substantive training in history, economics, rhetoric, and sociology (and included only two courses in "journalism" per se).<sup>122</sup>

Without delay, the faculty resumed its meeting the following day (April 11) and discussed proposals for additional programs of study, including: Professional Service in Philanthropic Lines, Law, Diplomatic and Consular Service, Public Service and Business. When the details of each program were in place, the assembled faculty voted to approve the curriculum as a whole and recommended it "to the Chancellor and Board of Regents for adoption."<sup>123</sup>

The faculty worked with dispatch, because they were able to submit their proposal, partially handwritten, later that same day to the Board of Regents. The Regents' minutes for April 11, 1905, record:

A report from the faculty recommending the organization of a school of social sciences, was read, received and placed on file and referred to the chancellor to report at a later meeting.<sup>124</sup>

No further official action on the proposal is recorded in the available records of the Chancellor or the Regents. Apparently, this remarkable faculty plan received no administrative encouragement and was effectively "vetoed."

The Nebraska School for the Social Sciences was an ambitious and forward-looking plan, and its proposed description in the University Catalogue is reproduced here in Appendix D. The plan demonstrated freely-organized, faculty-initiated, interdisciplinary cooperation. The plan simultaneously highlighted the common aims of the social sciences while acknowledging the separate contributions of each associated discipline. In an era of growing bureaucratic alienation, the School of the Social Sciences sought to secure interdepartmental cooperation and formal interdisciplinary exchange. It also sought to link university training more closely to practical application while simultaneously raising the standards of social scientific investigation and publication.

Distinctive features of the School included emphasis on the practical aspects of the social sciences, and specific provisions for graduate students. The School was designed to train students to use social scientific principles and knowledge in professional careers in the applied worlds of politics, diplomacy, business, journalism, philanthropy, and public service generally. For example, practical experience "in connection with the College settlement and charity organization" was required for all who sought certification in philanthropy. Students were to be united with the community they prepared to serve rather

than abstracted from it. The inclusive, global intent of the School was underscored by its purposeful and automatic registration of all graduate students "whose majors fall within the departments of the school."

The School was organized as a working community of scholars, in which all instructional officers and all graduate students (and selected undergraduates) became members of the "Assembly." The interdisciplinary Assembly was to meet at least monthly for both social and educational objectives. Open-ended evening sessions -- removed from the routine of daytime instructional schedules -- were envisioned. In particular, the Assembly was "to hear and discuss papers" by its members or "by others invited to address it." The anticipated accomplishments of each meeting were considered sufficiently significant that a record would be kept, and provision was made for a secretary to record "the proceedings of the evening in a book provided for the purpose." And while the emphasis was on practical work, the School intended to foster scientific study of high quality by requiring a thesis or dissertation -- "affording a training in scientific writing with a view to publication" -- for the A.M. and Ph.D. degrees awarded by the School's constituent departments.

The political complexion of the School of the Social Sciences formally placed Roscoe Pound in a network of social

scientists, in accord with Pound's view of jurisprudence as a social science (for a well-developed statement along this line, see Pound 1929). The School was to be composed of five autonomous departments: (a) American History and Politics, (b) European History, (c) Economics, Commerce and Sociology, (d) Institutional History, and (e) Public Law and Jurisprudence. In 1905, the respective Chairs of these Departments were, in turn: H.W. Caldwell, F.M. Fling, W.G.L. Taylor, George Howard, and Roscoe Pound. E.A. Ross, as the only full Professor of Sociology, served formally under the administration of W.G.L. Taylor.

Nebraska was not the only place where the idea of a School of Social Sciences took root, yet the early start by Nebraska's faculty suggests that Nebraska could have become a leading model. A friend of Ross' at the University of Minnesota remarked in September 1905, "We have been nursing a project for a College of Social and Political Sciences." Ross was asked to supply a report on the Nebraska plan and its present status, for in Minnesota it was "heard that you at Nebraska have already organized something of the kind."<sup>125</sup>

The School of the Social Sciences was a grass roots, faculty-initiated plan to institutionalize a cooperative model of social science education and research. As such, it flew in the face of top-down, bureaucratic control of



compartmentalized organizations. Earlier attempts by Pound and others to form creative educational structures had met generally with little administrative resistance, but by 1905 this free-wheeling approach to university organization was increasingly eclipsed by hierarchical administrative control. In addition to the administrative veto of the School of the Social Sciences, Pound also suffered a frustrating dispute between himself, Chancellor Andrews, and the Regents concerning the support and future direction of the College of Law (discussed further below).

The first decade of the twentieth century on the Nebraska campus witnessed a shift in balance between the waning spirit of *communitas*, on the one hand, and the ascendant forces of modernity, alienation, and bureaucratic control, on the other. The proposed School of the Social Sciences was a victim of this institutional struggle for organizational control. So too, the co-educational student literary societies lost out to the classism and sexism of the Greek letter fraternities and sororities. All-campus convocations became increasingly rare after this period, and finally suffered extinction. The serious yet collegial interdisciplinary reality of the Graduate Club has never been adequately replaced. And the full-scale liminal silliness of the Faculty Carnival lives only in microfilmed newspaper accounts. When the campus lost these

communitas-generating patterns of social interaction, it ceased to be as lively and attractive as it once had been. Nor is it surprising that E.A. Ross and Roscoe Pound, who thrived on playful camaraderie mixed with serious intellectual work, soon left the University of Nebraska in search of more responsive academies.

#### The Law, Dean Pound, and Bureaucratic Alienation

Based on his experiences as a student of botany and law, Roscoe Pound believed deeply in the virtue of diligent, self-guided independent study. This anti-bureaucratic philosophy of education marked the manner in which he quietly pursued his later studies in sociology and reformulated the conception of law in the United States. If available, he welcomed the helpful, laissez-faire guidance of experienced scholars, such as Bessey and Ross, but for Pound the ultimate responsibility for intellectual achievement lay primarily with each student. This sense of dedicated individualism, unfettered inquiry, and personal responsibility for intellectual accomplishment led Pound, paradoxically, to use bureaucratic measures to try to protect what he saw to be the conditions necessary for creative and progressive scholarship. As a judge, as a university instructor and, most directly, as a law school dean, Pound developed a vested interest in the logic,

rhetoric, and ideology of administrative control which was, often as not, antithetical to the intellectual freedom he so dearly cherished.

This section outlines Pound's experience as a new academic dean, from 1903-1907 (Figure 4.4). It is significant that it was during this period that Pound's formulation of sociological jurisprudence took its initial and foundational form. In the judicial arena, Pound argued vigorously for supportive institutional responsiveness to social change. Attentiveness to social trends was a major axiom of sociological jurisprudence. As Dean of Nebraska's College of Law, Pound instituted curricular changes that he believed responsive to the needs of law students in particular and Nebraska in general.

Dean Pound made substantial progress with his reforms, but not without a resistance, from recalcitrant Regents, at one end, to balky students, at the other. Pound saw himself, as he saw the vanguard of legal reform he advocated, pitted against the reactionary, unyielding forces of unthinking and often petty traditionalism, especially in Nebraska.<sup>126</sup> Pound did not apparently comprehend the paradox that his administrative pursuit of "needed," socially responsive curricular change was simultaneously "controlling" rather than consensual, inherently bureaucratic and repressive of the individualistic



**Figure 4.4. Dean Roscoe Pound, circa 1906**

**Source: Nebraska State Historical Society**

educational ideals he treasured. As Pound's academic career progressed at Nebraska, he became increasingly embroiled in intrusive bureaucratic entanglements.

Pound's path from botany to law school Dean unfolded over a fifteen year period, from the award of his undergraduate degree in 1888 to his appointment as Dean in 1903. From the time Pound completed his M.A. studies in botany (1889) to the award of his doctorate in botany (1897), Pound's plant studies competed less and less successfully with his increasingly intense interest in the study of law. As early as 1888, Pound joined with other students in an ad hoc, professionally-oriented law class taught by a Lincoln attorney (Pound 1905b: 51), and he apprenticed in his father's law firm. Pound's correspondence to his former Harvard classmate, Omer Hershey, demonstrates that by 1892 Pound (who was still several years away from completing his doctorate in botany) was well entrenched in legal practice. He was admitted to the bar, handled routine office chores for his father, consulted with clients, increasingly argued some cases himself, and made appearances before the Nebraska supreme court.<sup>127</sup>

Pound's growing professional maturity and stature as a recognized young lawyer drew him ever more tightly into a wider circle of social activities in Lincoln. Pound had

long been a fixture on the University of Nebraska campus (including service as a football referee and sometime football coach),<sup>128</sup> but now his social network expanded to include Lincoln's political, business, and social life. He lent his assistance to the local Republican party (then still seen by many as the liberating party of abolition), and in 1904 he joined the Nebraska State Historical Society.<sup>129</sup> Pound's father and mother were active in various social and civic projects, including the Historical Society. Roscoe's marriage in 1899 to Grace Gerrard (of Columbus, Nebraska) also drew Roscoe further into Lincoln's social and civic circles. Among other projects, Grace became active in the the Woman's Club of Lincoln.<sup>130</sup>

Pound's reputation as an astute legal scholar grew, and in 1901 he was named a Commissioner of the Supreme Court of Nebraska. As a Commissioner, Pound served on a panel that heard overflow cases from the Supreme Court when that Court had more cases than it could handle. The appointment was favorably received in Lincoln's social circles. The Courier noted:

The composition of the new commission guarantees effectiveness . . . . Mr. Roscoe Pound is a young man, a lawyer and a botanist of distinction among old men. Like the vice president of this country he leads the strenuous life. Interested in athletics, in science, a successful lawyer, with an unlimited capacity for study and an inclination to acquire all the facts of a case and the application of the law to similar cases,

before it comes up for trial, Mr. Pound has acquired the respect of the bar. And although he is young for a judge, nobody can say, who knows his peculiar ability and acquirements that he is too young.<sup>131</sup>

The Commissioners' "recommendations" on each case were de facto judicial decisions that the Supreme Court then reviewed and routinely approved as if its own (Sayre 1948: 122-134). A list of the decisions Pound helped write is found in Setaro (1942: 82-119).

This period also marked Pound's full-fledged entry into the academic world. Pound first taught a course on Roman law in the Latin Department starting in 1895 (Sayre 1948: 137), and in 1899, Pound joined the University of Nebraska faculty in full form, being appointed as an Assistant Professor. The minutes of the Board of Regents for February 18, 1899, note:

That Dr. Roscoe Pound is appointed as assistant Professor of Jurisprudence to give instruction in the law college and in the Department of American History and Jurisprudence, with stipend of \$600.00 annually, payable \$300.00 from the legislative salaries account and \$300.00 from the law college tuitions account, services to begin September 1, 1899.<sup>132</sup>

Pound's appointment was redefined the following year when the Board declared on April 12, 1900, that it "approves Roscoe Pound's appointment in the Department of American

History, and his title of Instructor in American History and Jurisprudence."<sup>133</sup> Pound's teaching at this time appears confined primarily to the Department of American History and Jurisprudence. At that time, law courses were taught both within the College of Law (for students who intended to practice law) and in the Department of American History and Jurisprudence (to give students a cultural analysis of law rather than a practitioner's indoctrination).

Pound carried much more than a full load during this period, as Sayre (1948: 138) recorded:

At this time he was still carrying on his botanical work for the University, he was chairman of the republican central committee for Lincoln, he was increasing his writings in the law, and he was one of the leading lawyers in the state capital although he was less than thirty years old. His full-time teaching at the University continued all through his service on the supreme court.

Pound's judicial work for the Supreme Court Commission succumbed, however, to the demands of a full-time academic post.

In 1903, Pound was appointed by Chancellor Benjamin E. Andrews to be Dean of the College of Law at the University of Nebraska, a position Pound held until 1907. He was promoted to Professor of Law with a salary of \$2500 per year "beginning October 1, 1903."<sup>134</sup> The University had opened



its law school in 1891 when it completed a friendly take over of a private, profit-oriented law school then operated in Lincoln. Pound was only the third Dean to head the College since its founding.

The impetus to establish a law college had come in part from within the University faculty, and the motion to positively consider the advisability of such a move was put by none other than George E. Howard. It was Howard who "was to appear before the board of regents to urge the adoption of the [faculty] report" favoring the establishment of the College of Law (Caldwell 1902: 53). It was Howard's leadership on the Nebraska faculty, shortly before his move to Stanford, that helped create the organizational reality of the College of Law and the bureaucratic niche into which Pound stepped as Dean in 1903.

Administratively speaking, Pound's deanship was not a particularly happy experience. His service was marked by meddling and interference by Chancellor Andrews and the Board of Regents. Even minor funding requests and budget reallocations had to be bureaucratically justified to the satisfaction of the Chancellor. Pound's leadership in moving the school to a professionally respected three-year plan of instruction and the implementation at Nebraska of the nationally-recognized "case-method" of instruction illustrates several of the difficulties he encountered

(Pound 1905b: 52). Based on his personal indoctrination into the "case method" of instruction then practiced at Harvard, Pound advocated this instructional mode although he noted it was "much decried by those who do not understand it" (Pound 1905b: 52).

In 1904, Pound recommended Harvard-trained George Ayers as one of two acceptable candidates to fill a vacancy on the law faculty.<sup>135</sup> With Pound's full approval and support, Ayers instituted the "case method" in full, leading to some student complaints, rebuke by the Regents, and direct criticism of Ayers' teaching by Chancellor Andrews in 1906.

In a letter to Andrews, Ayers argued that "while it would be distasteful for me to defend myself, I am bound to defend my method, so long as I believe in it." Ayers' defense of the Harvard-style "case method" included the following points:

(a) The system which I use, which has fought its way to recognition as the best system of teaching law and has revolutionized its study, has placed the Harvard Law School in its well recognized position as the leading institution in the world for the teaching of the Common Law.

(b) NEVERTHELESS THIS SYSTEM HAS ALWAYS BEEN AND I THINK ALWAYS WILL BE CRITICISED WHEREVER AND WHENEVER IT IS APPLIED FOR THE FIRST TIME IN ANY INSTITUTION OF LEARNING, AS "INDEFINITE" AND "DESULTORY."

(c) The results, however, show that the criticism whenever made against the system itself -- as distinguished from any one teacher's application of it -- is due to a mistake. The system substitutes thinking, criticism, analysis, for memorizing; and the student thrown more than ever before upon his own resources and feeling a weakness somewhere, ascribes it at first to the method, rather than to himself. Afterwards, if he is honest with himself, he knows better. If, however, he is lazy-minded, he will be apt always to blame the method.<sup>136</sup>

Ayers likened the Harvard case method to the Socratic method, noting that "the students having the same class of mind as those who opposed Socrates are likely to oppose it."<sup>137</sup>

Pound was astounded by Chancellor Andrews' administratively direct criticism of Ayers, having bypassed Pound. Pound wrote stiffly to the Chancellor on August 9, 1906, "I have just learned with some little astonishment of your letter to Mr. Ayers," noting:

If I had been advised of the fact that the regents had complaints before them, I believe I could have explained the whole matter. I investigated the whole affair much more thoroughly than it is at all likely the regents could have done and I know that there was not just ground of complaint and that the whole affair was extremely puerile. It is not very pleasant, therefore, to learn that upon an ex parte and extremely superficial investigation the regents have reached another conclusion. It has been my unvarying practice to keep away from the

regents as much as possible, and I have always spoken to you before going to any of them with any project or suggestion. I think I am entitled to equally fair treatment.

Pound backed Ayers completely:

The difficulty is not with Mr. Ayers, but with the repugnance of advanced classes to a different method from that to which they approved. Wherever the Harvard methods are first used, the same complaints arise . . . . I have not the least doubt that time will vindicate Mr. Ayers entirely.

Pound had considerably more on his mind. He continued, protecting his own turf, lecturing the Chancellor on bureaucratic prerogatives:

But I have a personal interest. If I am to be held responsible for the College of Law, I must insist upon full authority with respect to methods of instruction. If the methods I introduce are not approved, I shall be only too happy to step out. As to the students, I will undertake that they shall be abundantly satisfied when once they learn that the College of Law is a place for work and not an asylum for loafers, athletes, and singers.<sup>138</sup>

He concluded with the threat that if he was not to be supported, then he desired to be "relieved at once." With Pound's support, Ayers weathered the storm, but soon after Pound resigned in 1907, Ayers was ousted from the University of Nebraska.<sup>139</sup>

Pound's respect for the hands-on, pragmatic logic of the case method was deeply set in his own Harvard training and in his study of botany as a laboratory science. In remaking the law school curriculum, Pound emphasized the methods he had learned in scientific laboratories. About law teaching at Nebraska, Pound (1905b: 53) wrote:

The practice courts are, as it were, laboratories. Each student is required to find out for himself what to do, and to learn by his mistakes and by correcting or taking advantage of the mistakes of others. The actual working of courts of justice is simulated as closely as possible. The student draws his own papers, works up his own case, and tries it exactly as he would in practice. And the presence of an instructor to prevent the formation of bad habits or erroneous impressions ... enable us to combine the advantages of attendance upon the courts, open to the office student, and the theoretical instruction supposed to be the sole advantage of the student in the law school.

And to teach the practical aspects of conveyancing, Pound (1905b: 53-54) observed:

A problem is placed upon the blackboard and the student is required to draw the proper conveyances to meet it. The ordinary conveyancing blanks are at hand, and he selects his blanks and fills them out with such assistance or suggestion from the instructor as seems advisable. In this way, an instructor going about the room, looking over the work of the students as it progresses and making suggestions and changes, can accomplish much more than could be done in the ordinary procedure by lecture or recitation.

Pound had a clear vision of what constituted effective legal instruction, and he was not prepared to allow the Chancellor or the Board of Regents to interfere with his freedom as academic architect.

Pound found that obtaining even small appropriations for the College of Law necessitated bureaucratic memoranda and continuing negotiations with Chancellor Andrews. Pound had to plead for minor sums (amounts of \$50 to \$150) to keep the practice court, so crucial to his program, adequately staffed.<sup>140</sup> He begged for \$1000 to improve the law library facilities which, in 1905, Pound judged to be "still very poor."<sup>141</sup> In 1906, Pound felt that the need for student lockers was so pressing that he offered to finance their installation himself, "I find the expense of 120 lockers to be put in the practice court room would not be so large that I could not easily advance the money."<sup>142</sup>

Pound also wrangled with Andrews over admission standards for the College of Law. In June 1905, Pound wrote, "I am very anxious about admission to the Association of American Law Schools, and fear difficulty in getting in." Andrews favored open admissions, but Pound wanted more rigorous standards for the law school. Pound wrote:

I hesitate to go before the Association with the possibility of being pushed on this point and having to admit that a student may enter as a candidate for a degree from any high school and

come into perfect standing on the strength of legal studies only. Western schools are looked upon with suspicion already in this matter of preparation.

It seems to me some means might be devised that would meet the demands of the association and not yet interfere with your views as to the general colleges -- with which I have no desire to come in conflict.<sup>143</sup>

A compromise to accommodate Pound was finally reached. If pressed, Pound could tell the accreditation committee that "the Chancellor and the Dean of the College of Law are authorized to determine the conditions and the method of admission to the College of Law."<sup>144</sup> While chafing at Andrews' reluctance to raise standards, Pound failed to critique the fact that the operation of the law school was simultaneously being coerced into national-level bureaucratic control by the Association of American Law Schools.

Frustrated with Andrews (on occasion) and the Board of Regents (more frequently), perturbed by his relatively low pay as Dean, and perceiving that his efforts as Dean were not greatly appreciated, Pound submitted his resignation in December 1904. He wrote to Chancellor Andrews:

A business opportunity has offered itself which I cannot well neglect . . . . I therefore take the earliest opportunity of informing you that I shall ask the board of regents at the April meeting to relieve me from further service.<sup>145</sup>

In a much more detailed letter of resignation, dated February 13, 1905, Pound articulated his frustrations. Pound chided the Chancellor for failing to appreciate and support the staffing needs of the law school. He wrote to Andrews:

In your recent report to the Regents it is said that in order to give to the College of Law "the greatest possible efficiency" an additional instructor should be provided. I venture to assert that such additional instructor is imperatively required to give to the College ordinary efficiency.<sup>146</sup>

Pound then detailed the logic of his assertion, most of which related to the added work required by the transformation of the law school from a two-year to a three-year program. It is clear that Pound felt personally put upon and used. He wrote:

The result of these changes has been that during the last semester I was compelled to teach 21 hours, besides giving 11 hours to the practice courts, and this semester, cutting out everything superfluous, I find myself teaching 18 hours and giving 11 hours to the practice courts. Another year with three full classes the situation will be aggravated. I need not say that the burden is simply intolerable; and in the absence of and



assurance or appearance of relief it seems best to avail myself of a proffered business opportunity, which in any case would have been a strong temptation.<sup>147</sup>

Under the best scenario, Pound saw himself teaching twenty-nine contact hours per week in addition to his administrative duties as Dean. When compared with the six contact hours per week typically taught by today's professorial sociologists at the University of Nebraska-Lincoln, Pound's complaint is placed in bold relief.

If the University administration did not appreciate Pound's work, many students and colleagues clearly did. Word of Pound's intended resignation became public when the Daily Nebraskan in early January 1905 reported a "rumor to the effect that Dean Roscoe Pound of the College of law is soon to leave the University and take up the practice of law again."<sup>148</sup> An open letter from three law students was published in the Daily Nebraskan on January 14, 1905, asking Pound to reconsider, but only if "such a course not cause too great a personal sacrifice."<sup>149</sup>

Student pressure to retain Pound grew, and on February 10, 1905, the Daily Nebraskan reported "a mass meeting of all the law students" to hear a report by a student committee investigating the conditions of Pound's resignation.<sup>150</sup> The law students appointed a committee of nine students "to devise some means of bettering the

condition of the law college."<sup>151</sup> The result was a detailed, four-page analysis and petition, adopted unanimously by the law students in a mass meeting. The petition requested that the Board of Regents do all in its "power to retain our most talented and respected Dean, Roscoe Pound, the news of whose resignation has caused dismay and regret within the entire college."<sup>152</sup>

In February 1905, the Regents appointed a committee to meet with Pound. The results of the committee's discussions appear only briefly in the Board's minutes of February 21:

The special committee directed to confer with dean Pound touching his resignation made a verbal report of their conference which was taken under advisement by the board.<sup>153</sup>

A week later, the Board met again to consider Pound's resignation.

The Regents met on March 1, 1905, and according to the Daily Nebraskan "the business of the meeting was for the most part in regard to the resignation of Dr. Pound."<sup>154</sup> Pound met with the Regents, and the Daily Nebraskan noted, "the Regents refuse "to give out anything in regard to the conference with Dr. Pound."<sup>155</sup> Whatever their deliberations and discussions, the action of the Board of Regents was officially terse. The Board's minutes for March 1, 1905, record simply:

Ordered on motion of regent Rich that the resignation of Dean Pound of the law college be and is hereby accepted to take effect July 1, 1905.<sup>156</sup>

Pound and the Regents reached an impasse, and as far as the Regents were concerned, the College of Law could find a new Dean.

Three months later, however, on June 13, the Regents made an overture to Pound. The Board's minutes record:

The special committee on law college matters reported recommending the re-election of Judge Roscoe Pound as dean.

Ordered on motion of regent Calkins that Roscoe Pound be and is hereby elected dean of the college of law at a salary of \$2500.00 from July 1, 1905.<sup>157</sup>

Pound accepted, with no increase in pay. The further details of the understanding reached between Pound and the Board of Regents were kept confidential. In the meantime, the faculty's creative proposal for a School of the Social Sciences (discussed above) suffered death by administrative neglect.

By the time that Alvin S. Johnson, the economist, arrived on the Lincoln campus in autumn 1906, faculty morale had plummeted. He recalled (Johnson 1952: 173):

These warring professors were men I had worked under in my student days. I knew them to be sincere scholars and devoted teachers. It distressed me deeply to find them mutually embittering their lives, apparently without cause.

Johnson reported that Roscoe Pound was persuaded to make "a compelling invitation" bringing the faculty together for an evening of "academic sociability." An assembly room in a local hotel was rented "and all the faculty assembled." The party, which featured loud choral singing, "was a great success." The professors' party is a prime example of anti-structure, in which all were equals and engaged with vigor in liminal activities, including song (and quite possibly drink). Although the party apparently generated a strong sense of *communitas*, the professorial "roaring," according to Johnson, disturbed a neighboring meeting devoted to social reform. "They reported us to Chancellor Andrews, who told us, gently but firmly, nothing of the kind was to happen again" (Johnson 1952: 173-174). It would be hard to find a better example of bureaucracy crushing the bonds of a new and fragile *communitas*.

By 1907, Pound had had enough. He resigned to accept a professorship at Northwestern University where he was given to believe that his talents and energy would be appreciated. When Pound's faculty colleagues at Nebraska became aware of

the Northwestern offer, they petitioned Chancellor Andrews and the Regents to make a special effort to retain Pound at Nebraska. The faculty recommended better quarters for the law school, a salary hike (to \$3800) for Pound, an increased operating budget, and additional faculty lines in the College of Law.<sup>158</sup>

There is no record that Andrews or the Regents seriously considered the petition. In any event, Pound was intent on leaving, and he correctly perceived greater opportunities to the east. This time, at least, the Regents were more cordial and, in accepting Pound's resignation, expressed their regret at his departure and wished him well in his new pursuits.<sup>159</sup>

Despite this publicly amicable parting, Pound was still to receive a final bureaucratic slight from Nebraska. Later in 1907, after moving to Northwestern, Pound discovered that the University of Nebraska had shortchanged him on the final installment of his salary for 1906-07. He sent an angry letter to the University Secretary expressing deep resentment, much deeper than might be expected over a misunderstanding about a paycheck. The text reads in whole:

I have just learned that with characteristic pettiness the University has cut me out of some \$211.00 of justly earned salary. I have done a year's work and I am entitled to a year's pay. I did not agree to work for a year for \$2289.00, and you have no reason to expect me to accept any

such reduction. It seems a pity that I should be driven to a law suit to recover my salary from my alma mater, but, if such is the only course I shall be obliged to resort to it. Not for one moment will I abide such outrageous and wholly uncalled for treatment.<sup>160</sup>

The eventual remedy, if any, for Pound's complaint was not discovered by this researcher.

From a hard-working, fun-loving, sometimes mischievous youth at the University of Nebraska, Pound left Lincoln embittered and frustrated by his experience in an increasingly bureaucratized and administratively rigid world. While *communitas* was still possible, Pound drew on its renewing properties and gave much of himself to his studies and the University. When the University of Nebraska became increasingly entangled in bureaucratic control and gradually lost the mechanisms to sustain widespread, enduring *communitas*, it also lost one of its most accomplished and dedicated members. Pound, however, did not confront the loss of *communitas* at its roots nor critique his own role as a bureaucrat per se. For Pound, bureaucratized administration was not inherently problematic, difficulties were due primarily to incompetent and/or parochial administrators. Throughout the remainder of his career, Pound rarely found sustenance for his work in the renewing power of *communitas* although he joined and

participated in many professional groups and organizations. Rather, he sought control over his work by accepting increasingly instrumental and financially lucrative positions within the nation's elite, private educational institutions, specifically: Northwestern University, the University of Chicago, and Harvard University.<sup>161</sup>

With his move to Northwestern, Roscoe Pound's "Nebraska years" came formally to an end. In Lincoln, he had become a foremost botanist and launched a distinguished legal career. In Lincoln, he was introduced to sociology by Edward A. Ross, and fashioned the foundations of American sociological jurisprudence. His sociological accomplishments reached their full stature, however, beyond the borders of his frontier prairie home. During his next two years of work in downtown Chicago at the law school of Northwestern University, Pound's sociological activities and links to the wider sociological network increased dramatically.

Notes for Chapter Four

1. The Nebraskan, 1(no. 1, October) 1892: 1.
2. Quotation from Burdette G. Lewis, quoted in Ross (1936: 91). Lewis was a Ross student at Nebraska who became a noted public servant. Roscoe Pound later chose Lewis to conduct a study of penal corrections for the Cleveland Survey of Criminal Justice (Chapter 6).
3. Pound to Andrews, 20 November 1903, Box 17, Folder 133, Regents Papers, University of Nebraska Archives.
4. Ibid.
5. Ibid.
6. Caldwell to Chancellor and Regents, 7 December 1903, Box 17, Folder 132, Regents Papers, University of Nebraska Archives.
7. "Faculty of the College of Law" University of Nebraska Catalogue, 1907: 279.
8. Taylor and Ross to Andrews, 1 December 1905, Box 18, Folder 143, Regents Papers, University of Nebraska Archives.
9. Ely to Ross, 30 September 1905, Box 3, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin.
10. Ely to Ross, 11 December 1905, Box 3, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin.
11. Ely to Ross, 20 December 1905, Box 3, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin.
12. Howard to Andrews, 8 February 1906, Box 19, Folder 144, Regents Papers, University of Nebraska Archives. Howard's progressive vision of sociology was realized by first hiring Hutton Webster in 1907. Webster, who was made Professor of Social Anthropology (the first in the nation), was a former student of Ross and Ely. Next, Howard hired Lucile Eaves in 1908. Eaves had been a colleague (and most likely a student) of both Ross and Howard at Stanford. When Eaves left the University of Nebraska in 1915, Howard immediately hired Hattie Plum Williams (who had just completed her doctorate under Howard's supervision). Eaves and Williams



were the first two women ever hired as full-time sociologists at Nebraska. And, during the patriarchal dark age that followed, no additional women were hired until until Professors Lynn White and Mary Jo Deegan were appointed, a year apart, in the mid-1970s.

13. Minutes of Meetings, Board of Regents, February 15, 1906, Reel 2, 1897-1909, University of Nebraska Archives.

14. The Daily Nebraskan announced special courses offered, for example, by Prevey, Pound, Ross, Howard, and Alvin S. Johnson (Nebraskan-Hesperian 22 January 1901: 1; Daily Nebraskan 10 October 1903: 4; 4 February 1904: 3; 14 January 1905: 1).

15. Classroom activities sparked occasional comment. For example, members of Mr. Prevey's course on "charities" were reported making a visit to Lincoln's Home for the Friendless in 1901 (Daily Nebraskan 17 December 1901: 3). His class in statistics was said to be, "helping the city charity organization compile some statistics on the dependent classes of Lincoln" (Daily Nebraskan 10 October 1901: 3). News from Ross' first semester at Lincoln during the spring of 1901, was found in this item:

Professor Ross' class in "cities" has completed a long research into the social phenomena of city life. The result of their research into the economic bases of some seventy cities will be typewritten and returned to the students, making a most interesting souvenir of the course. (Nebraskan-Hesperian 7 May 1901: 6).

Having finished the project described above, Ross apparently kept his students busy, for later that spring it was further noted that "Dr. Ross' class in 'cities' is making a critical study into the municipal government of English cities" (Nebraskan-Hesperian 21 May 1901: 6). The social psychology class, taught during the fall of 1901 by A. Ross Hill, was observed to be "reporting upon various books, which deal with the social problem" (Daily Nebraskan 23 October 1901: 3).

16. Pound read a paper on the need of laws in botany" at the Sem. Bot. and "drew many illustrations from the need of law in the community" (Daily Nebraskan 5 November 1901: 3). Pound's Sem. Bot. paper on "The Vegetation of Certain Lakes in Minnesota," read in 1904, received notice in the (Daily Nebraskan 9 April 1904: 7), as did his speech on the

occasion of the twentieth anniversary of the Sem. Bot. (Daily Nebraskan 13 October 1906: 1).

17. When the student officers and men of the University's Company A Drill Team held a party the night before the annual drill competition, it was Pound (a former captain of Company A in 1888) who rose to charge the young cadets with enthusiasm, as the Daily Nebraskan reported:

After the refreshments had disappeared, Dean Pound gave a brief sketch of military life at the University in his day, which saw practically the beginning of our military department. He recounted the long and glorious record of A Company, including the winning of the Omaha cup in the national competitive drill at Omaha in 1892. (Daily Nebraskan 15 May 1906: 4).

18. Papers delivered at professional meetings were noted with approval. Citations included a detailed account of a 1901 speech by Ross in Philadelphia (Nebraskan-Hesperian 17 April 1901: 2, 7). Ross' planned 1903 address to the American Economic Association on "The Relation of Sociology to History, and his 1903 address to the State Teachers' Association on the "Relation of Education to Society," were also mentioned (Daily Nebraskan 11 November 1903: 1; 7 November 1903: 3). Details of the newspaper's reaction to Ross' invitation to speak at the 1904 St. Louis world's fair is found in note 41, below.

19. Specialized talks were also announced, including Dean Pound's inauguration of a series of "Monday Night Lectures" by guest speakers on topics of interest to students in the College of Law (Daily Nebraskan 9 November 1905: 1).

20. Ross and Pound were in demand to make off-campus addresses. These too were sometimes noted in the Daily Nebraskan, including, for example, "On Wednesday evening Professor E.A. Ross will speak on Religion in Its Relation to Sociology" at the Missouri Valley Unitarian Conference at All Soul's church in Lincoln (Daily Nebraskan 4 November 1901), and "Dr. Ross' 1904 talks to Sunday School classes at All Soul's Church (Daily Nebraskan 29 October 1904: 4). George Howard's 1905 speech to the Nebraska Bar Association was reported (Daily Nebraskan 23 November 1905: 1), as was the fact that Pound also went to Omaha to attend the Bar Association meeting and, presumably, hear Howard speak (Daily Nebraskan 23 November 1905: 3). In January 1906,

Pound lectured at the University Society in Kansas City, said by the Daily Nebraskan to be "composed of Kansas City university men and is one of the largest organizations of its kind in the west" (16 January 1906: 3). Later that year, Pound was tapped by his mother to speak to a delegation of club women. The student chronicle reported:

At a luncheon given at the residence of Mrs. S.B. Pound, Monday October 29, 1906, to the visiting delegates to the Fifth Annual Conference of the Daughters of the American Revolution, Dean Roscoe Pound delivered a patriotic address on "Sons of the American Revolution." Chancellor E. Benjamin Andrews also spoke on "The Grand Army of the Republic." (Daily Nebraskan 31 October 1906: 2).

When Ross returned to Lincoln in April 1907 to give an off-campus address at the Oliver Theater, a brief but powerful announcement appeared in the Daily Nebraskan. All students were invited to hear Ross' presentation, noting: "He is at present rated as one of the foremost sociologists of the world" (27 April 1907: 1). Details of Ross and Pound's appearances before the Lincoln Woman's Club are found in note 130, below.

21. Publication activities were also chronicled. The Nebraskan-Hesperian (12 March 1901: 5) announced that the second edition of the "Phytogeography of Nebraska by Drs. Pound and Clements has just been issued by the Botanical Seminar under authority of the Regents." Ross's intent to contribute a series of articles to the American Journal of Sociology during 1904 -- and his status as an advisory editor of AJS -- were noted (Daily Nebraskan 7 November 1903: 8). Even after Ross' departure for Wisconsin, interest in his work was sufficiently high that the Daily Nebraskan (24 October 1906: 2) reprinted a column from the Wisconsin Cardinal concerning the publication of Ross' book, The Foundations of Sociology. The book, dedicated to George Howard, was based on the AJS "Moot Points" series written while Ross was at Nebraska. Howard's receipt of an invitation to contribute "articles on divorce and on marriage" to a new edition of the Encyclopedia of Religious Knowledge was noted in the Daily Nebraskan which also observed that Howard previously contributed similar work to the Encyclopedia of Social Reform and the Encyclopedia Americana (Daily Nebraskan 22 November 1906: 1). Pound's translation and editing of a new collection of readings on Roman law was greeted by the Daily Nebraskan (31 October 1906: 3) as a useful publication for students, "the work

comes from the press of a Lincoln publishing house. It will give a new impetus to the study of Roman law, as indeed it fills a large gap in the library of the law student." The Daily Nebraskan (9 April 1907: 2) also noted Pound's article on "Preparing for the Study of Law," in the April, 1907, issue of the Nebraska University Journal.

22. Two appreciative essays on football authored by Pound were published in the student paper: "No Humbug at Nebraska," and "The Academic Status of Foot Ball Players" (Daily Nebraskan 24 November 1904: 7; 23 November 1905: 3).

23. Pound's legal expertise assisted in the formal prosecution of a man who printed and sold counterfeit tickets to Nebraska games during the 1903 football season (Daily Nebraskan 11 November 1903: 1). In calling attention to a 1905 "send off" rally for the team, the student paper encouraged attendance, noting: "It is quite probable that Dr. Pound will be in charge of the meeting, and every student knows Dean Pound's ability to get enthusiasm out of a crowd" (Daily Nebraskan 19 October 1905: 1). Again, in 1906, the student paper urged attendance at a football rally on the grounds that "Dr. Pound is to preside as he has so often done in the past" (Daily Nebraskan 11 October 1906: 1). A "letter to the editor" from Pound concerning the operation of the university Athletic Board found welcome space in the Daily Nebraskan (1 May 1906: 2).

24. When news about the success of former students reached Lincoln, it frequently appeared in the Daily Nebraskan. For example, Edith Abbott, University of Nebraska class of '03, and an advanced student of both Pound and Ross, was cited for her receipt of a fellowship in the Department of Economics at the University of Chicago in 1905 (Daily Nebraskan 1 March 1905: 1). Abbott's publication of an article in Harper's Weekly on "Are Women Business Failures?" received a detailed summary (Daily Nebraskan 12 April 1905: 2). Abbott's Ph.D. from the University of Chicago and, specifically, her appointment to a fellowship of the American Collegiate Alumnae (now, the American Association of University Women) enabling her to attend the London School of Economics was noted with esteem in 1906, "As there is only one of these appointments each year, it is considered a high honor," said the Daily Nebraskan (23 March 1906: 2).

25. Members of the male faculty at Nebraska frequently arranged camping, hiking, fishing, and hunting "outing" with their male colleagues (see, for example: W.G.L. Taylor

to Ross, 17 July 1905, Box 3, Folder 2; W.G.L. Taylor to Ross, 9 August 1908, Box 4, Folder 2; Davis to Ross, 25 February 1909; Box 4, Folder 3; Ross to W.G.L. Taylor, 10 June 1916, Box 8, Folder 5; W.G.L. Taylor to Ross, 17 July 1916, Box 8, Folder 5, E.A. Ross Papers. Thus, it is not surprising that the Daily Nebraskan (11 April 1906: 2) carried this bit of tongue-in-cheek gossip:

Six members of the faculty, Messrs. Ross, Richards, Clark, Willard, Votaw and Clapp will leave tomorrow for Wood Lake, Cherry county, to spend a few days during vacation. They will take shotguns and ammunition along and we are led to suspect that the ducks in that particular region will be a least somewhat alarmed. The results of their research work will be published in The Nebraskan after they return and "show up."

Faculty outings and camping trips, sometimes elaborate, were favored by a number of American sociologists during this era. In 1908, Ross wrote to Pound to ask "if we may count on you for the big mountaineering trip in the summer of 1909" then being planned by Ross and W.G.L. Taylor (Ross to Pound, 24 March 1908, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library). For a further sampling of similar communitas-generating adventures taken by other sociologists, see A.M. Wilson's (1912) illustrated, tongue-in-cheek report, "Field Work in Sociology."

As late as 1938, the peripatetic Ross wrote to Pound:

I am off to Australia February 20 on a freighter, the UNIKOI of the American Pioneer Line, and hope to spend a few weeks in Australia and learn something of their problems and reflections. You better come along with me. I shall be back either on the same boat on June 19 or its sister boat July 19. My boat takes only 11 persons, charges but \$455 and there is an unoccupied berth in my room. (Ross to Pound, 6 January 1938, Box 21, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin).

Pound, noting, "Indeed I wish I could go to Australia with you," declined Ross' invitation (Pound to Ross, 10 February 1938, Box 21, Folder 4, E.A. Ross Papers).

26. The Nebraskan-Hesperian (8 January 1901: 6) noted that "Dr. and Mrs Pound spent their [winter break] vacation visiting friends in Chicago." Even Pound's purchase of a personal microscope "for the continuation of his study in botany" generated a brief note (Daily Nebraskan 5 March 1907: 4).

27. My judgment is influenced in part by my experience writing a weekly column (under the pen name "Michael Hilligoss") on graduate student life for the Daily Nebraskan during the 1975-1976 academic year. While occasionally accused of "stretching" a point, I was gratified that my columns (published as fictional dispatches from an underground organization of scholars called "The Vine Street Irregulars") were considered sufficiently perceptive to become assigned reading in a graduate socialization seminar taught on the East Campus of the University of Nebraska in the Institute of Agriculture and Natural Resources.

Roscoe Pound, it should be noted, had no great faith in the accuracy of newspapers. See, for example, R. Pound to Olivia Pound, undated note, "As to China . . .," Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

28. George E. Howard was a well-known Nebraska alumnus and former faculty member when he returned to Nebraska as Professor of Institutional History in 1904. He earned his bachelors degree (1876) and masters degree (1879) at the University of Nebraska, separated by two years of study in law and history in Munich and Paris (1876-1878). An honorary doctorate was bestowed by the University of Nebraska in 1894.

An account of "the Ross affair" and Howard's subsequent forced resignation from Stanford University appeared in the "Alumni Notes" column of the Nebraskan-Hesperian 12 February 1901: 5). Howard's extended visit to Lincoln from May to July, 1902, was duly noted (Daily Nebraskan 19 May 1902: 3), as was his return to the Lincoln campus as Professor of Institutional History (Daily Nebraskan 27 September 1904).

29. The inauguration of the twentieth century was marred by news in the Nebraskan-Hesperian (23 January 1900: 1) that Amos G. Warner, one of Nebraska's most distinguished sociologists, was dead at the untimely age of thirty-eight. Warner was, like Pound, a native Nebraskan who earned his bachelors degree in Lincoln. Pound later recalled that Warner was one of the brightest of Nebraska's alumni (cf.,

taped interview with Pound by Robert Manley, University of Nebraska Archives). Warner is buried on a windy hill just outside of Roca, a small town south of Lincoln, Nebraska.

Amos Warner authored American Charities (1894), a book that became the standard analysis of social services in the United States. After earning a doctorate at John's Hopkins, Warner returned to teach at the University of Nebraska. From 1889-1891 (during which Pound finished his M.A. in botany, studied law at Harvard for a year, and returned to apprentice law work in Lincoln), Warner held an appointment as an Associate Professor of Economics and Political Science, and thus was not officially "counted" as a sociologist. When the University of Nebraska subsequently failed to give Warner a requested leave of absence, Nebraska lost a rising sociological star. Warner resigned his Nebraska post and moved to Washington, D.C., where he was appointed Superintendent of Charities in 1891 (Deegan 1989a).

Significantly, it was former Nebraskan Amos Warner who urged Edward A. Ross in 1892 to go with him to Stanford University to join the new social science faculty that David Starr Jordan was assembling in Palo Alto (see, for example, Warner to Ross, 18 November 1892, Box 1 Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin). Ross and Warner had become friends at John's Hopkins during their earlier studies there under Richard Ely. At Stanford, Warner and Ross joined forces with former Nebraskan George Howard who had arrived at Stanford in 1891. Ely wrote to Ross:

Allow me to congratulate you upon your new position. I learn from Dr. Warner that you have practically decided to go with him to California. You will have in Dr. Warner a delightful companion and one who will cooperate most efficiently in all your plans. I envy the association with Dr. Warner and Professor Howard in your work. (Ely to Ross, 1 February 1893, Box 1, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin).

Through Warner and Howard, a Ross-Nebraska connection was forged early, well before Ross' academic freedom was squelched at Stanford.

Warner's national fame as an astute, systematic, and pragmatic social analyst grew directly from his publication

of American Charities in 1894 (Deegan 1989a). His early death from pneumonia saddened his colleagues (Howard 1908). Ironically, Warner's death coincided with the firing of Ross and Howard at Stanford, the ensuing demise of sociology at Stanford, and the subsequent move of Ross and then Howard to Nebraska, Warner's home state.

30. Hesperian Student 15 December 1888: 6.

31. Little else is known at this point about Mary Adell Tremain beyond her post-graduate membership (with Amos G. Warner) in the Historical and Political Science Association of the University of Nebraska in 1886. Other members of the Association (whose object was "to pursue original investigations of economic and historical questions in a thoroughly scholarly way) included: I.J. Manatt, George E. Howard, H.W. Caldwell, and Roscoe's parents, Stephen and Laura Pound (Transactions and Reports of the Nebraska State Historical Society 1887: 313-315). Tremain's (1892) study of slavery was ranked among the noted publications written by University of Nebraska alumni (Caldwell 1902: 75) and was honored in 1969 by a reprint edition published by the Negro Universities Press.

32. Hill to Prevey, 5 July 1900, Class Records 1902-1906, C.E. Prevey, Record Group 12/22/11, University of Nebraska Archives, Lincoln, Nebraska. A. Ross Hill was active, as was W.G.L. Taylor, in the effort to secure Prevey to replace the departing Charles Ellwood in 1900, and (in the letter cited above) Hill offered to "take care of" Prevey when Prevey arrived in Lincoln until Prevey could get settled.

33. Taylor to Prevey, 2 July 1900, Class Records 1902-1906, C.E. Prevey, Record Group 12/22/11, University of Nebraska Archives, Lincoln, Nebraska.

34. University of Nebraska Catalogue, 1887-1888: 38.

35. R. Pound to O. Pound, 17 December 1918, Box 1, Folder 4, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

36. Ibid.

37. Pound took the "Classical Course" (rather than the Scientific or Literature tracks) at the University of Nebraska (University of Nebraska Catalogue 1887-88, p. 12). The course requirements for the Classical Course are specified in the University of Nebraska Catalogue 1887-88



(pp. 36-38). Pound's undergraduate work in botany was thus accomplished on an elective basis. Much of Pound's coursework was devoted to required courses in Latin and Greek. The Classical Course did, however, require a sequence of (a) three specified social science courses during the senior year and (b) a sequence of three specified courses in philosophy, logic, and ethics. The senior social science courses appearing on Pound's academic transcript are: Political Economy (Chancellor Manatt); International Law (Chancellor Manatt); and Constitutional Law (Professor Caldwell). That Manatt was Pound's teacher for the courses indicated is verified by Pound (R. Pound to O. Pound, 17 December 1918, Box 1, Folder 4, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society). That Caldwell taught Constitutional Law is inferred from the University Catalogue. Unfortunately, the Catalogue does not identify the instructors of courses in the philosophy sequence, but these may well have included A. Ross Hill (cf., Roscoe Nathan Pound, academic transcript, Record of Class of 1888, University of Nebraska; and University of Nebraska Catalogue 1887-88, pp. 47-48). Pound apparently took no history courses (none were required in the Classical Course), and thus missed the opportunity to study directly with Howard.

38. Howard studied jurisprudence in Europe, and at Nebraska taught an upper-division course on "Ancient Law: A Study of the Genesis of Aryan Institutions in the works of Maine, Hearn, Coulanges, Laveleye, Morgan, McLennan, Spencer, etc." (University of Nebraska Catalogue 1887-88, p. 55).

39. The faculty of the College of Literature, Science, and the Arts during Pound's senior year, 1887-1888, was composed of only eighteen members, including the Chancellor of the University. The graduate student body was also small, consisting of eleven students (six women and five men), one of whom was Mary Adell Tremain (University of Nebraska Catalogue 1887-88, pp. 10-11).

40. In becoming Nebraska's preeminent, outspoken sociologist, Ross may have unintentionally created faculty resentment in some quarters. Before Richard Ely hired Ross at Wisconsin, he made inquiries regarding Ross' work at Nebraska. Ely subsequently confided to Ross that Ross' tenure at Nebraska had not been without criticism:

From another source complaint is made that you are encroaching on the territory of others. This member of the faculty says, "I think it

very unfortunate that Ross should begin his work by treading on the toes of so many people. . . . Very probably he has done this ignorantly, but it is nevertheless an unfortunate beginning for him." (Ely to Ross, 24 March 1906, Box 3, Folder 3, Edward A. Ross Papers, State Historical Society of Wisconsin).

41. A major international scientific meeting, the Congress of Arts and Science, was held in September 1904 at the Universal Exposition (world's fair) in St. Louis. There is no evidence that Pound attended this event, but the cast of characters involved in its organization and presentations prefigures the widening intellectual network into which Pound later entered. Two of Pound's colleagues at the University of Nebraska, Edward A. Ross and George Elliott Howard, were already members of this international circle of recognized scholars.

Howard and Ross were invited by Albion Small (Chair of the Department of Sociology at the University of Chicago) to make presentations at the prestigious Congress of Arts of Science at the Universal Exposition in St. Louis in September 1904. Ross spoke on "Recent Problems of Social Psychology" (cf. Ross 1906) and Howard on "Social Control and the Function of the Family" (cf. Howard 1906). When the invitations were extended in early 1904, Howard was still on the faculty at the University of Chicago and Ross was at Nebraska. Ross' invitation to speak at the Congress was considered a great honor by the Daily Nebraskan (20 January 1904: 1):

This invitation to one of our faculty to take part in so important a meeting does not only show honor to the ability and prominence of Dr. Ross as one of the foremost sociologists of America, but it is a thing of which our University may feel proud.

The Daily Nebraskan proclaimed "this Congress will be the greatest scientific meeting ever held in the history of the world." By the time the Congress convened, Ross and Howard were both faculty colleagues at the University of Nebraska. Chancellor Benjamin Andrews was also invited to present a paper.

The scientific results of the Congress filled eight hefty volumes (Rogers 1906). The volumes in which the Ross and Howard papers appeared were on the reserve reading list in a

second semester Political Science and Sociology course at the University of Nebraska in 1907-1908. The University of Nebraska Library copies of volumes V and VII of the (Rogers 1906) edition of the Congress of the Arts and Science, published by Houghton, Mifflin and Company, bear stickers with the legend:

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RESERVED

2nd SEMESTER, 1907-8

POL SCIENCE & SOC.

Return this book to reserve shelves.

This book must not be taken from the rooms.  
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In the persons of Ross, Howard, and Andrews, Nebraska was well-represented in St. Louis, and it is tempting to hypothesize that Pound also made the trip. No direct evidence has been uncovered in this study to document that Pound accompanied his distinguished colleagues to St. Louis, but if he did he would have found several presentations of special interest in addition to those by Ross, Howard, and Andrews. The Congress featured papers and reports in a wide range of scholarly disciplines of relevance to Pound's work, specifically: Botany, Sociology, and Law:

(1) Botany: Presenters in botany included the noted John M. Coulter (Head of the Department of Botany at the University of Chicago, and sponsor of the ecological studies of Henry C. Cowles), and Oscar Drude (the German ecologist whose ecological methods Pound and Clements critiqued in their joint doctoral thesis).

(2) Sociology: Attendees at the St. Louis Congress were also treated to reports by a "Who's Who" of luminaries in the social sciences, including: sociologists Jane Addams, Franklin H. Giddings, Charles Henderson, George E. Howard; Edward A. Ross, Graham Taylor, William I. Thomas, Ferdinand Tonnies, George Vincent, Lester Frank Ward, and Max Weber; economists E.R.A. Seligman and Richard T. Ely; and anthropologist Franz Boaz. In many ways, the Congress was a preview of Pound's later connections to sociology. Significantly, several of these outstanding scholars (including Addams, Henderson, Howard, Ross, Weber, Seligman, Ely, Boas, and the organizer, Albion Small) later figured directly in Pound's sociological work.

(3) Law: Several leading jurists were on the St. Louis program, including: John H. Wigmore (Dean of the

Northwestern University School of Law) who enticed Pound to leave Nebraska in 1907; Ernest Freund (who would be a colleague at the University of Chicago Law School during Pound's brief tenure there), and Henry Beale, then Dean of the Harvard University Law School.

In autumn 1904, Pound was a faculty colleague of Ross and Howard, two of the leading sociologists in the United States. It is not overly important whether Pound attended the 1904 Congress in St. Louis, yet on the basis of intellectual interest there is every reason to suspect that he was at least interested in attending.

42. Minutes of Meetings, Board of Regents, 12 December 1900, Reel 2, University of Nebraska Archives.

43. In January 1906, a meeting of the Nebraska State Historical Society began with a pipe organ solo by George Howard followed by E.A. Ross' discussion of "The Problem of Railroad Taxation" (Minutes of the Nebraska State Historical Society, 18 January 1906: 214-215, Nebraska State Historical Society, Lincoln, Nebraska).

44. Ross refers here to the numerous articles Pound wrote on the topic of sociological jurisprudence, and specifically to a proposed book on Sociological Jurisprudence that Pound promised early on to write for a series edited by Richard Ely. Pound promised the book at several points during his career, but apparently never completed the work as a book manuscript per se (see Chapter 8).

Richard Ely, Ross' mentor and colleague, once wrote to Pound:

Professor Ross was immensely pleased with what you said about his influence upon you. I think it will never cease to give him satisfaction. I told Ross that I would have to come in for part of the credit, as he, Ross, took his work at the Johns Hopkins under me. If one cannot be a spiritual father, I suppose the next best thing is to be a spiritual grandfather. (Ely to Pound, 9 June 1916, Box 54, Folder 2, Richard T. Ely Papers, State Historical Society of Wisconsin).

45. Lewis to Ross, 17 January 1907, 4 March 1907, 10 November 1907, 11 November 1907, Box 3, Folder 7, E.A. Ross Papers, State Historical Society of Wisconsin.

46. Lewis to Ross, 4 March 1907, Box 3, Folder 4, E.A. Ross Papers.
47. Lewis to Ross, 11 November 1908, Box 3, Folder 4, E.A. Ross Papers.
48. Ross to Hertzler, 12 November, 1929, Box 15, Folder 5, E.A. Ross Papers.
49. "Communitas" is defined above, in the introductory section of this chapter.

The balance between alienation and communitas at the University of Nebraska has, in recent years, tipped at times toward communitas-generating structures, but the overall trend appears to be toward greater alienation. For example, the "free university" movement (born of protest and clamor for educational responsiveness during the "Vietnam era") was popular among segments of the Nebraska student body, but is now a shadow of its former exuberance. More formally, courses taught in the University of Nebraska's Centennial Education Program, begun during the "Vietnam era," offered alternatives to the comparatively less flexible programs available elsewhere on the campus. The program was anti-structural in several ways, including the spatial arrangement whereby students attended classes within the dormitory complex where they lived. Student work sometimes resulted in innovative and insightful projects (e.g., Nygren and Deegan 1980). But, administrative devaluation of the Centennial program was costly to faculty participants. John Davidson (1974: 57) observed:

I have noticed, however, that serving as a Centennial Fellow is not recognized by administrators as being an accolade. It is, instead, a detriment to the professor, and appointment as Centennial Fellow too often means passing over for promotion, or failure to receive the normal salary increment.

Despite generally favorable reviews from students and professors in the program (e.g., Knoll 1972; Harding 1974a), the Centennial "experiment" was terminated by bureaucratic edict on the basis of "financial exigency."

The present study does not examine modern dynamics between alienation and communitas at the University of Nebraska. Suffice it to say that authentic liminal play is now generally absent from the Lincoln campus. During the

past twenty years, I have attended (ever hopeful!) numerous events at the University of Nebraska in which liminality was mimicked but not achieved. My experience of such events is doubly alienating for having entertained the hope of renewal and celebration. Examples include Walpurisnacht, the Great Plains Seminars, former Dean Meisels' faculty "soirees," and seemingly countless concerts and performances in the "Kimball series." All had liminal features, but (like Nebraska football) were too deeply penetrated by the four core codes (Deegan 1989b) to generate *communitas*. As ritual events, the anticipated liminal journeys "betwixt and between" were left unfinished. For me, these events were sometimes "fun," but rarely liberating.

Like the professors who participated in Nebraska's Centennial program, I have seen examples that point in other directions. It was my good fortune while working in the College of Design at Iowa State University to enjoy and participate in a weekly, noontime event known as "The Friday Institoot." Each week, a 30 to 45-minute "silly" event took place in the College atrium. It was loosely organized. The idea came from a faculty member who was bent on "trying it" rather than worry about "professional image" or whether it would be "successful" (two concerns raised by a College committee from which he requested modest funding). When he got no money, he recruited volunteer performers wherever he could find them (often among friends and students).

The "Institoot" hosted juggling demonstrations, folksinging, and appearances by a giant plastic chicken. We were visted by an officially-registered U.S. presidential candidate with a four-foot white beard who traveled from New York by bus to lecture us, and we were mesmerized (as it turned out) by a faculty member who sang all of the songs from "The Music Man" without accompaniment. I nearly always found a smile on my face after each "Institoot," and felt more a member of the College. So did most, although a few administrators were disconcerted when office personnel stopped work and left telephones unattended during the "Institoot." Unfortunately, the perpetrator of the "Institoot" became seriously disaffected, resigned and moved to Australia -- and no one took his place. It is difficult to sustain anti-structural play in a modern university. When the effort to foster liminal activity results in struggle rather than renewal it can be literally self-defeating.

The modern context and possibility of liminality and *communitas* in bureaucratic organizations per se needs better articulation if the core codes of everyday life are to be constructively confronted. This I hope to accomplish in a future project. The real challenge, however, as Mary Jo Deegan (1989) so ably puts it, is to design workable, institutionally-sustained, *communitas*-generating rituals for the modern world.

50. The first men's fraternity at Nebraska was formed in 1884 and the first women's sorority in 1887. Louise Pound (1919: 61) notes, "At one stage members of fraternities were barred from membership in the literary societies, and "Greeks" already within the societies were expelled." Rivalry between literary societies and the Greek-letter fraternities "often added zest to undergraduate politics" (L. Pound 1919: 61). Rather too optimistically, Louise Pound (1919: 61) concluded that the coeducational character of the literary societies "enables them to fill a special and permanent place in undergraduate life and they continue to flourish."

51. Pound was elected to the office of "Critic" for the Union Society in 1886 (The Hesperian 15 January 1886: 1) and to the office of "President" (and his sister, Louise, to the office of "Secretary") in 1887 (The Hesperian 15 December 1887: 6).

52. T.F.A. Williams (husband of Professor Hattie Plum Williams) wrote to his fellow Palladians:

In 1930 Prof. L.L. Bernard of St. Louis was contemplating publication of a book on Founders of Sociology (I am not sure of the title), and I gathered together for him quite a lot of material regarding Dr. Amos G. Warner, of the Class of 1885 of the University of Nebraska, one of our foremost Palladians of the early day. (Williams to Seymour, 26 November 1948, Box 1, Correspondence, T.F.A. Williams Collection, State Archives, Nebraska State Historical Society).

Warner was also active on the student newspaper. The masthead of the Hesperian Student lists Warner as one of four associate editors from February 20, 1885, to July 5, 1885.

53. In 1885, Amos Warner won a two-person speaking contest. "The contest, though a very close one, was decided in Mr. Warner's favor. The subject of his oration was 'A Word and an Idea,' and was handled in his usual and original manner" (Hesperian Student 1 May 1885: 7).

Two years later, in 1887, Roscoe Pound participated in an oratory contest sponsored by the Union and organized by his sister. Roscoe spoke on the Latin poet Lucretius. The student paper reported, "Mr Pound was rather stiff and formal in his delivery and was entirely devoid of enthusiasm." He won second prize (The Hesperian 15 June 1887: 4-5). Rarely one to give up a point, Pound later taught a course on Lucretius at Harvard in 1940 (R. Pound to O. Pound, 23 October 1939, Box 1, Folder 5, State Archives, Nebraska State Historical Society).

If public speaking was not yet Roscoe's strong suit in 1887, his sisters, Louise and Olivia, and their friend, Willa Cather, used their Union affiliation for theatrical innovation. A landmark spoof, "Shakespeare Up to Date," was produced in 1892 by the Union Society and reported thus:

The curtain drops while Lady Macbeth is calling on the powers to aid her; Ophelia, her hair loose and garlands in her hands, has gone insane; Portia rendering her judgment against Shylock and Juliet is acting the balcony scene. All are raving and shouting together. Miss Olivia Pound played Ophelia; Miss Cather, Lady Macbeth; Miss Ruliffson, Portia; and Miss Louise Pound, Juliet. All parts were well played and showed study and ability. This is the first attempt made in the University towards theatricals and should be encouraged. (The Nebraskan 1 November 1892: 18).

Little immediate encouragement was needed. To raise money for the University Athletic Association, Louise Pound wrote "A Perjured Padulion" the following January. Billed as "an emotional tragedy in five acts," the play was a satire on "university literary society life." Willa Cather, Louise Pound, and Olivia Pound again took leading roles. The performance before a small audience was "well taken and elicited much applause" (The Nebraskan 1 January 1893: 50).

One of Nebraska's most famous sociology students, Edith Abbott, also took her turn as campus wit. According to one account (Korsmeyer 1921: 4):



When not studying, Miss Abbott entered into our play as whole heartedly as she did her work. She wrote the class play for 1901, and the clever lines in the take off on the professors kept the audience in an uproar. She acted as toastmistress of several dinners and her fund of wit and funny stories made her a favorite in this capacity too.

54. For specific accounts, see, in turn: Daily Nebraskan 19 January 1906: 1; 9 May 1906: 1; 4 October 1906: 1; 19 January 1906: 1; 20 April 1906: 1; 5 February 1904: 2; and 11 February 1904: 1.

55. Breckenridge was secured through the offices of Roscoe Pound:

[Breckenridge] is considered one of the strongest lawyers of the state, and is leader of the younger men. It is through Dean Pound that we are able to have this man with us for convocation, as these two men are very close friends. (Daily Nebraskan 9 May 1906: 1).

56. E.A. Ross was involved in finalizing the arrangements for the address. When the Imperial Chinese Commission wanted to visit the University of Nebraska (cf., Daily Nebraskan 18 January 1906: 1), Ross was contacted when the organizer of the visit could get no response from the Governor of Nebraska or the Chancellor of the University (Jenks to Ross, telegram, 13 January 1906, Box 3, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin, Madison, Wisconsin). Presumably, Ross got things moving.

57. Jordan was the controversial administrator who played a key role in the Ross and Howard firings at Stanford in 1900 (a fact discreetly omitted in the Daily Nebraskan notice of his appearance). Once on campus, Jordan, a botanist, felt sufficiently at home to visit Pound's botanical mentor, Charles Bessey:

Dr. Jordan of Leland-Stanford University, surprised Dr. Bessey yesterday morning by dropping into his class. He was asked to give a talk, to which request he consented and said that he was one of the first instructors in botany in Harvard and he prided himself on the fact that

from those who took work under [him] there were now a dozen of the leading botanists of the United States. (Daily Nebraskan 11 February 1904: 3).

58. Daily Nebraskan 17 January 1905: 1. Roscoe Pound also took a dim view of plagiarists, including Theodore Roosevelt. Pound wrote to his father in 1911:

Roosevelt's editorials in the Outlook, to which you refer, were evidently dictated very hurriedly and in consequence are full of slips. He completely misapprehends Sir Frederick Pollock and Mr. Justice Richmond, whom he cites. On p. 53 of the issue of 11 March, the paragraph at the top of the right-hand column is taken almost bodily from my paper on "Liberty of Contract." It is not even a paraphrase. He has merely transposed sentences, like a boy writing a theme out of the encyclopaedia. Thus he makes a show of having read Sidgwick, Mill and Spencer very cheaply. A busy man has to do such things, I suppose, but really our great men show very badly alongside the English Statesmen who manage to be scholars. I can't help feeling that Roosevelt only half understands the point in what he writes about our courts. (Pound to his father, 21 March 1911, Box 1, Folder 2, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society).

59. Daily Nebraskan 20 January 1905: 1.

60. Ibid.

61. Ibid.

62. Ibid.

63. Daily Nebraskan 1901; 10 December 1901; 9 December 1903: 2; 9 March 1904: 3; 18 October 1904: 1; 27 October 1904: 2; 25 November 1905: 3; 15 March 1906: 1; 5 April 1906: 1; 22 May 1906: 1; and 18 October 1906: 1.

64. In particular, Ross noted that the Census Bureau bill was "one of the greatest importance, and is what the scientific men and statisticians have been begging for for a long time."

65. The Daily Nebraskan (28 November 1905), in which Pound's campus address on "The Common Law" would have been reported is, unfortunately, not available in the University of Nebraska Archives. The talk was announced in the Daily Nebraskan (25 November 1905: 3).
66. Daily Nebraskan 10 December 1901.
67. The cultural ethnocentrism and racist import of Ross' ideas are further discussed in Chapter 9.
68. Daily Nebraskan 15 March 1906: 1.
69. Daily Nebraskan 23 November 1905: 1.
70. Ibid.
71. Daily Nebraskan 5 April 1906: 1.
72. Ibid.
73. Daily Nebraskan 18 October 1904: 1.
74. Ibid.
75. Daily Nebraskan 19 May 1905: 1.
76. Ibid.
77. Ibid.
78. Daily Nebraskan 5 April 1906: 1.
79. Ibid.
80. Ibid.
81. Daily Nebraskan 9 May 1906: 2.
82. Daily Nebraskan 18 October 1906: 1.
83. Ibid.
84. Ibid.
85. Ibid.
86. Ibid.

87. Ibid.
88. Daily Nebraskan 16 October 1903: 1; 21 October 1903: 1; 13 November 1903: 1; 14 November 1903: 1.
89. Daily Nebraskan 30 October 1903: 3.
90. Ibid.
91. Daily Nebraskan 29 October 1903: 1.
92. Daily Nebraskan 30 October 1903: 2.
93. Daily Nebraskan 21 October 1903: 2.
94. Daily Nebraskan 23 October 1903: 1.
95. Daily Nebraskan 28 October 1903: 2.
96. Daily Nebraskan 29 October 1903: 1.
97. Daily Nebraskan 10 November 1903: 1.
98. Daily Nebraskan 11 November 1903: 1.
99. Daily Nebraskan 13 November 1903: 1.
100. Ibid.
101. Daily Nebraskan 14 November 1903: 1.
102. Ibid.
103. Daily Nebraskan 13 November 1903: 1.
104. Daily Nebraskan 14 November 1903: 1.
105. Ibid.
106. Ibid.
107. Daily Nebraskan 16 October 1903: 1; 3 December 1903: 2.
108. Daily Nebraskan 14 November 1903: 1.
109. Daily Nebraskan 21 October 1904: 1.
110. Daily Nebraskan 22 October 1904: 1.

- 111. Daily Nebraskan 1905.
- 112. Daily Nebraskan 9 January 1907.
- 113. Daily Nebraskan 21 September 1901: 1.
- 114. Daily Nebraskan 18 March 1904: 3.
- 115. Daily Nebraskan 1906.
- 116. C.E. Prevey saved a few of the invitations sent to him circa 1902 (C.E. Prevey Papers, Box 2, Memorabilia no. 3, University of Nebraska Archives).
- 117. Graduate Bulletin of the University of Nebraska 1 (March 1902): endpapers.
- 118. Daily Nebraskan 1902.
- 119. Daily Nebraskan 17 February 1904: 2; 3 May 1906: 4.
- 120. Faculty minutes, 17 February 1905, University of Nebraska Archives.
- 121. Faculty minutes, 10 April 1905, University of Nebraska Archives.
- 122. Proposal, The School of the Social Sciences, 1905, Regents Papers, University of Nebraska Archives.
- 123. Faculty minutes, 11 April 1905, University of Nebraska Archives.
- 124. Board of Regents, Minutes of Meetings, April 11, 1905, Reel 2, 1897-1909, University of Nebraska Archives.
- 125. [Falwell] to Ross, 29 September 1905, Box 3, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin.
- 126. For example, when portions of the Nebraska faculty later came under fire from the Regents in 1918, Pound wrote to his sister, Olivia, "I cannot say I am surprised at this because I learned long ago that when anything is going on in the country, Nebraska can be relied upon to make it ridiculous" (R. Pound to O. Pound, 4 June 1918, Box 1, Folder 4, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society). Pound had no high regard for Nebraska, but his slashing observations could also be more general. He wrote the following year, "I

suppose there are not more than two or three university executives in the country who are not afraid of their shadows -- and I would not bank much upon them" (Pound to Edgerton, 18 July 1919, Box 62, Folder 19, Roscoe Pound Papers, Harvard Law School Library).

127. Pound to Hershey, correspondence, 1892-1893, Paul Sayre Collection, University of Iowa Archives.

128. In 1892, Pound wrote to his friend Hershey:

The University of Nebraska football team played the University of Illinois team today and won 6-0 in a really fine game. Although I have been coaching the Nebraska guards and tackles for the last two weeks, I was agreed upon as referee, and apparently gave satisfaction, as there were no kicks made. But it has made me terribly nervous. I hope I may never be a judge! The strain of being fair is a fearful one to a man naturally partisan -- bitterly and uncompromisingly partisan, as you know. (Pound to Hershey, 24 October 1892, Paul Sayre Collection, University of Iowa Archives, Iowa City).

129. Pound to Hershey, correspondence, 1892-1893, Paul Sayre Collection, University of Iowa Archives. In 1904, Pound joined the Nebraska State Historical Society and gave a paper in connection with an organization known as "Sons and Daughters of Nebraska" (Minutes of the Nebraska State Historical Society, 13 January 1904: 199).

130. Pound's marriage to Gerrard is described in Sayre (1948: 110-119). The Lincoln Woman's Club was established in 1894 under the impetus of Mrs. James H. Canfield, wife of the Chancellor of the University of Nebraska. The Club was organized as "an inclusive departmental club" and was intended to be more open, representative, and democratic than its predecessors (Lincoln Woman's Club 1916: 1-9). The annual announcement of the Lincoln Woman's Club for 1904-1905 lists Mrs. Roscoe Pound and Mrs. S.B. Pound (Roscoe's mother) as members, and the 1907-1908 announcement lists Louise Pound (Roscoe's sister) as "assistant leader" in the Club's "Literature Department."

The Lincoln Woman's Club represents and illustrates one of many organizational threads by which Roscoe Pound was linked to sociological issues and discussions during the period 1900-1906 in Lincoln. In addition to its social and

cultural activities, the Lincoln Woman's Club was a forum for civic reform and sociological discussion. In 1903, Edward A. Ross addressed the Club on "Social Factors in the Race Problem" as part of a series of lectures on race (to which H.W. Caldwell, a history professor at the University of Nebraska, also contributed). For one year, 1904-1905, the Club organized a "Department on College Settlement" in which Mrs. Roscoe Pound was a member. Roscoe Pound spoke on "Divorce Laws" on December 17, 1906 (see the annual announcements, or "yearbooks," of the Lincoln Woman's Club, 1903-1907). Documentation of Pound's presentation is a hand-written annotation to the 1906-1907 announcement presently on file in the "reserve collection" at the Bennett Martin Public Library, Lincoln, Nebraska.

The Lincoln Woman's Club likely increased ties between Pound and several of his University of Nebraska faculty colleagues, if not Ross and Howard per se. At various times, the wives of several sociologically-oriented University of Nebraska male faculty members were members of the Lincoln Woman's Club, including: Mrs. Roscoe Pound, Mrs. C.E. Prevey (wife of sociologist C.E. Prevey), Mrs. W.G. Langworthy Taylor (wife of the Chair of the Department of Political Economy and Sociology and herself a scholar and instructor in her husband's department), and Mrs. H.W. Caldwell (wife of the Chair of the Department of American History). Miss Mary Tremain (a former Nebraska student of George Howard and instructor in American History at the University of Nebraska) was also a member. The Lincoln Woman's Club did not include all possible sociological links, however, as Mrs. E.A. Ross and Mrs. G.E. Howard were not members of the organization.

The absence of Mrs. Ross and Mrs. Howard may in part be explained by the initially negative reaction within the Lincoln women's club community to the positions taken by Professors Ross and Howard at Stanford during the "Ross affair." The Courier (22 December 1900: 1-2), published by the Nebraska Federation of Women's Clubs, printed a strong, anti-Ross editorial in December 1900. Later, The Courier (19 January 1901: 3) argued that behavior such as that exhibited by Ross and Howard would discourage the wealthy from contributing to educational institutions. Since Mrs. Stanford had established Leland Stanford University as a memorial to her late husband, argued The Courier, Ross was wrong for having tarnished the memory of Leland Stanford and thus for having run roughshod over the efforts of a widow to build a memorial to her husband (although in fact Ross attacked practices of the type in which Stanford engaged,

not the man himself). The Courier (2 February 1901: 1) later provided space for an explanatory letter from George Howard. A note about politics on the University of Nebraska Board of Regents concerning the Ross appointment also appeared in The Courier (23 February 1901: 2). Ross eventually gave an invited lecture to the Lincoln Woman's Club in 1903, but the initial negative reaction may have lingered among some members of the Nebraska women's club community.

131. The Courier 13 April 1901: 1.

132. The minutes were annotated to read, "Salary in law college to date from Oct. 1, 1899" (Board of Regents, Minutes of Meetings, 18 February 1899, Reel 2, 1897-1909, University of Nebraska Archives).

133. Minutes of Meetings, Board of Regents, 12 April 1900, Reel 2, 1897-1909, University of Nebraska Archives.

134. Dales to Pound, 13 June 1903, Box 1, Folder 12, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

135. Pound to Chancellor [Andrews], 18 July 1904, Box 17, Folder 135, Regents Papers, University of Nebraska Archives.

136. Capitalization in second numbered paragraph is in the original. (Ayres to Chancellor Andrews, 13 July 1906, Box 19, Folder 147, Regents Papers, University of Nebraska Archives).

137. Ibid.

138. Pound to Andrews, 13 July 1906, Box 19, Folder 147, Regents Papers, University of Nebraska Archives.

Subsequently, Pound advised Andrews:

There are two ways to judge a teacher -- by the popularity he attains with students, or by the results he obtains. By the first standard, I concede Mr. Ayres was not at all successful, although I think he will be in the end. By the second standard, he did very well indeed. I was as much concerned over his case as anyone, and I took the pains to go over the examination papers in two of his subjects myself very thoroughly.



The questions he set were as hard and as thorough as those set at any law school in the land. I am sure any competent judge would pronounce them models. No one could pass who did not have a [good], thorough knowledge of the subject. The papers, on the average, were very good; many of them were excellent. I know the classes in these subjects knew more about them than any that have taken these subjects since I have been in school. That is the great thing. The rest will come. (Pound to Andrews, 18 August 1906, Box 19, Folder 147, Regents Papers).

139. Ayres wrote to Ross, "The Chancellor apparently began 'gunning' for me as soon as Pound left" (Ayres to Ross, 20 May 1908, Box 4, Folder 2, E.A. Ross Papers, State Historical Society of Wisconsin). W.G.L. Taylor wrote to Ross about Ayres, urging Ross to help Ayres find a position. With respect to factional fights in the law school after Pound's resignation, wrote Taylor, "the tension must have been severe" (Taylor to Ross, 21 May 1908, Box 4, Folder 2, E.A. Ross Papers, State Historical Society of Wisconsin).

140. Pound to Andrews, 14 July 1903, Box 17, Folder 131, Regents Papers, University of Nebraska Archives; Pound to Andrews, 6 June 1904, Box 17, Folder 135, Regents Papers; Pound to Andrews, 30 May 1905, Box 18, Folder 140, Regents Papers; Pound to Andrews, 11 December 1905, Box 18, Folder 143, Regents Papers.

141. Pound noted that, "we have not, for example, nearly so good a library as the new Creighton College of Law in Omaha" and asked for \$1000 to buy four sets of law reports at a price obtained "after some negotiation with various book sellers." Pound justified each purchase and assured the Chancellor, "These prices are very reasonable" (Pound to Andrews, 11 December 1905, Box 18, Folder 143, Regents Papers, University of Nebraska Archives).

142. Pound to Andrews, 18 August 1906, Box 19, Folder 147, Regents Papers, University of Nebraska Archives.

143. Pound to Andrews, 12 June 1905, Box 18, Folder 141, Regents Papers, University of Nebraska Archives.

The issue of "standards" was apparently a topic of no little comment. It was apparently Edith Abbott who noted as late as 1925:

It doesn't seem so long ago either that I was an undergraduate in the University of Nebraska and Roscoe Pound was the dean of a law school that offered a one year course and admitted anyone who could read and write. At least he said those were apparently the only standards of admission. (Address to the Graduate Club, circa 1925, Abbott Addenda, Box 3, Folder 8, Grace and Edith Abbott Papers, Regenstein Library, Special Collections, University of Chicago).

144. Attachment, Pound to Andrews, 13 June 1905, Box 18, Folder 141, Regents papers, University of Nebraska Archives.

Pound (1907: 68) noted with vindication in the Biennial Report of the Board of Regents to the Governor that raising "the requirement for admission to the college of law . . . to 28 credit-points, or a full high school course" resulted in increased enrollments rather a loss of students.

145. Pound to Andrews, 5 December 1904, Box 17, Folder 138, Regents Papers, University of Nebraska Archives.

146. Pound to Andrews, 13 February 1905, Box 17, Folder 138, Regents Papers, University of Nebraska Archives.

147. Ibid.

148. Daily Nebraskan 5 January 1905: 1.

149. Daily Nebraskan 14 January 1905: 1.

150. Daily Nebraskan 10 February 1905: 1.

151. Ibid.

152. Petition of Law students to the Board of Regents, [1905], Box 17, Folder 138, Regents Papers, University of Nebraska Archives.

153. Minutes of Meetings, Board of Regents, 21 February 1905, Reel 2, 1897-1909, University of Nebraska Archives.

154. Daily Nebraskan 3 March 1905: 1.

155. Ibid.

156. Minutes of Meetings, Board of Regents, 1 March 1905, Reel 2, 1897-1909, University of Nebraska Archives.

157. Minutes of Meetings, Board of Regents, 13 June 1905, Reel 2, 1897-1909, University of Nebraska Archives.

158. The petition was signed by fifty-five of Pound's colleagues, including: Charles E. Bessey, George Ayers, H.W. Caldwell, George Elliott Howard, H.K. Wolfe, George P. Costigan (who succeeded Pound as Dean of the College of Law), G.E. Condra, Frederic Clements, W.G. Langworthy Taylor, Louise Pound, and Samuel Avery. Petition to the Chancellor and Regents, 28 May 1907, Box 19, Folder 150, Regents Papers, University of Nebraska Archives.

159. Minutes of Meetings, Board of Regents, 11 June 1907, Reel 2, 1897-1909, University of Nebraska Archives.

160. Pound to Dales, 6 September 1907, Box 20, Folder 152, Regents Papers, University of Nebraska Archives. See also, Pound to Dales, 11 September 1907, Box 20, Folder 152, Regents Papers.

161. When Pound was finally installed in a professorship at Harvard, he wrote to his mother about his great pleasure at the spacious and finely appointed office, his new salary, and the earnest spirit of the students (R. Pound to his Mother, 14 June 1915, Box 1, Folder 2, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society).

## CHAPTER FIVE

## ROSCOE POUND AND PROFESSIONAL SOCIOLOGY

It is only by keeping in reasonably close touch  
with sociologists and economists that a lawyer can be  
useful to anyone but his clients.

-- Roscoe Pound (1907)<sup>1</sup>

Introduction

Pound attended to the professional responsibilities of a sociologist in many ways. His research projects were extraordinary, and are presented in Chapters 6 and 7. His intellectual writings and contributions to sociological theory are discussed in Chapter 8 and their axiological foundations are critiqued in Chapter 9. The present chapter focuses on Pound's organizational and professorial activities in sociology. The maturation of his professional relationships with Edward A. Ross, George E. Howard, Charles Henderson, Albion Small, Nicholas Timasheff, Georges Gurvitch, Pitirim Sorokin, and Talcott Parsons is outlined.

Specific attention is given to Pound's part in founding the American Institute of Criminal Law and Criminology, his participation in the American Sociological Society, and to the sociology of law courses that Pound taught in the Department of Sociology at Harvard University.

During his introduction to sociology at Nebraska under the tutelage of Edward A. Ross, Roscoe Pound came to admire the practical utility of sociology for jurisprudence. It was Ross to whom Pound looked as his sociological mentor, and on whom Pound called during his first organizational efforts to bring sociology into closer focus within the law as a profession. A reciprocal organizational relationship developed between these two men, culminating in the 1909 meetings of the American Institute of Criminal Law and Criminology.

When Ross wrote in autumn 1906 from his new post at Wisconsin to congratulate Pound on the furor created by Pound's address to the American Bar Association in August of that year, Pound replied, outlining his planned work on "The Necessity of a Sociological Jurisprudence" (Pound 1907b), and added:

You will pardon this bit of thinking on paper at you. Your interest in this matter and your responsibility for starting me in these lines must be my excuse. I believe you have set me in

the path the world is moving in. If the law schools insist on standing in the way as obstructions, probably we should not mourn if they are run over.<sup>2</sup>

Pound's sociologically-informed attack on the legal profession was not everywhere well received. Pound joked to Ross, "You would be amused, and I suppose I should be, at the letters I am getting."<sup>3</sup> Pound was soundly denounced by many lawyers, but not by all. In particular, his progressive views attracted the favorable attention of John H. Wigmore, Dean of the Northwestern University School of Law (Roalfe 1977).<sup>4</sup>

Wigmore sponsored Pound's nomination for appointment as "a full Professor of Law" at Northwestern,<sup>5</sup> launched a campaign to encourage Pound to accept,<sup>6</sup> and secured for Pound a firm offer of a \$4,000 salary."<sup>7</sup> Pound's acceptance brought him to Northwestern's law campus in downtown Chicago, where he remained for two years. Strategically speaking, Pound's move brought him not only to Northwestern, but also much nearer the heart of American sociology in Chicago.

During 1907-1909, Ross and Pound corresponded frequently, and discussed Pound's progress on a planned book to be titled Sociological Jurisprudence (Chapter 8). Ross was then writing his Social Psychology and advised Pound

that "I quote from your papers again and again" in the section on "custom-imitation." He asked Pound for references to additional, sympathetic authors "in order to spread the responsibility a little wider."<sup>7A</sup> Despite support from Ross, this was a period when Pound chafed at ostracism by his colleagues in the legal profession. After presenting his paper on "The Need of a Sociological Jurisprudence" at the American Bar Association in 1907, he wrote to Ross:

You might be surprised to know how I have lost caste with my good friends at Harvard Law School since my address at Portland. They look on the matter as a mild form of lunacy!<sup>8</sup>

In the coming months, Pound thought through various options for vindicating himself and his views. One possibility was offered by E.A. Ross.

Pound's aggressive, outspoken approach to social reform resonated harmoniously with Ross' views, and in 1908, Ross engineered an invitation for Pound to join the faculty at the University of Wisconsin. Ross, noting that "I am glad that I was able to bring the invitation to pass," urged Pound to accept by emphasizing two points:

You would receive here from men like Ely, Commons, Meyer, Scott, Reinsch, etc. a certain stimulus which can be gotten at no other university. Each of these men is exploring the

relations of the society of today, and no where can one obtain a more quantitative, scientific measurement of the degree of maladjustment between law and the relations it purports to regulate. You would get here lots of ammunition for the battles that are bound to come, could extract from strong men information you now have to get from sociological and economic books.

Ross continued:

There is no state in the Union in which the influence of university scholars upon legislation is so immediate and so great as here . . . . You would have here an extraordinary opportunity to enact your ideas into legislation.

And, Ross surmised:

Where you are you can write and speak. Here, you might, in addition, be able to leave the impress of your mind upon legislation. In the end you might have a greater career and accomplish more than where you are now.<sup>9</sup>

Ross' arguments were undoubtedly attractive to Pound, who wrote an appreciative response to Ross. Upon reflection Pound concluded, "It seems pretty clear to me, however, for many reasons which it would be difficult to explain otherwise than orally, that I shall do better to remain where I am."<sup>10</sup> The factors in his declination of the Wisconsin offer may have included early hints of a possible position at the University of Chicago, or, more concretely, an opportunity then unfolding at Northwestern to organize



and demonstrate the practical interrelationships between jurisprudence and the social sciences. The Northwestern University Law School was making plans to celebrate -- in 1909 -- the fiftieth anniversary of the school's founding.

## PART I

### THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY

The jubilee celebration of the Northwestern University Law School was the premise for establishing the American Institute of Criminal Law and Criminology and its associated Journal. Pound's pivotal organizational work created a new and potentially powerful link between jurisprudence and the social sciences, including sociology. John Wigmore later asserted (in a letter to George Vincent) that the organization was "essentially an institute of social research" and that:

At its formation in 1909, [it] was the first body to recognize that the solution of the criminal problem involved seven or eight distinct branches of science, namely, medicine, anthropology, sociology, penology, psychology, economics, law and police.<sup>11</sup>

As to the Institute's journal, Wigmore noted its pioneering role in criminology, "The Journal of the American Institute of Criminal Law and Criminology was, at the time of its

foundation, the only journal for that science in the English language."<sup>12</sup> In a tribute to his former Dean, Pound observed that the first Conference of the Institute was organized at Wigmore's "instance" and "guidance" and was one of Wigmore's greatest accomplishments.<sup>13</sup> Pound was loyal to Wigmore (if not Northwestern), and in his tribute to Wigmore he was overly modest about his own role in organizing the 1909 Conference.

Roscoe Pound was "chiefly instrumental in organizing the conference" that brought together lawyers, sociologists, psychologists, and other specialists in criminology at the first National Conference on Criminal Law and Criminology (The Green Bag 1909: 374). In March 1909, Pound confided to Richard T. Ely, the Chair of Ross' Department at Wisconsin:

Since sometime in December last nearly all of the time I have had outside of class work and the Law Review has been absorbed by the work of organizing the Conference. I anticipate that even more time will have to be devoted to it during the next few months.<sup>13A</sup>

This Conference, which Pound worked diligently to organize, structurally advanced Pound's belief that the various disciplinary interests concerned with resolving the problem of crime had much to share with each other. The Conference was Pound's swan song to Northwestern, however. When the interdisciplinary delegates convened on June 7 and 8, 1909,

Pound had already accepted a lucrative offer to join the Law School at the University of Chicago.<sup>14</sup>

Cooperation and communication among a variety of disciplinary interests were the dominant themes of the 1909 Conference. Pound opened the meetings on a hopeful note, urging:

that we might unite in one conference all these several interests of which I have spoken, that by uniting them in this way each might come to understand the difficulties under which the other is laboring, and the inherent as well as the acquired defects in our punitive justice system might be recognized. (First National Conference on Criminal Law and Criminology, 1909: 3).

The Conference was a large undertaking, and Pound (who chaired the Committee of Organization) made use of new and old interdisciplinary contacts in sociology to help insure a successful meeting.

Pound made the acquaintance of Charles R. Henderson (a Professor of Sociology at the University of Chicago) who instrumentally assisted the organization of the Conference. Henderson, a respected veteran of the American Prison Congress, was active in the planning phases of the Institute and served on a subcommittee of the the Institute's Committee on Criminal Procedure, chaired by Pound (Henderson 1910: 270). Pound's old colleague, E.A. Ross,

came from Wisconsin and ably chaired a substantial portion of the conference discussions. Ross adroitly wielded the gavel for two days as parliamentarian on sessions devoted to "Organization, Appointment and Training of Officials" (for a verbatim transcript of Ross' sessions, see First National Conference on Criminal Law and Criminology 1909: 80-138).

Invitations to attend the Conference were sent to knowledgeable specialists in the United States and Europe. The one hundred out-of-town delegates and sixty "resident" delegates from Chicago worked hard. Rather than read papers to each other, the delegates were divided into committees to consider and debate assigned topics from a list of 135 discussion questions earlier solicited from the participants by Pound's Committee of Organization. The purpose of the meeting was to foster interdisciplinary exchange, and this was successfully accomplished to the point that the delegates voted to institutionalize the forum by founding the American Institute of Criminal Law and Criminology.

Within the organizational structure of the Institute, Pound was formally linked to a small, but prominent circle of sociologists who shared his interest in interdisciplinary cooperation. Jane Addams, Charles R. Henderson, Maurice Parmelee, Edward A. Ross, and Graham Taylor were "official delegates" to the 1909 meeting. Other sociologists who enlisted in the work of the Institute within the first years

of its existence included: Edith Abbott, Katharine B. Davis, Charles Ellwood, Frances A. Kellor, and William I. Thomas.<sup>15</sup>

Although control of the Institute was vested largely in the hands of lawyers,<sup>16</sup> the sociologists named above played a disproportionate role in the life of the Institute. Ross (as was Pound) was elected a Vice-president of the Institute in 1909 and served as a member of the Executive Board and the Institute's five-member Council. In addition to work noted above, Henderson chaired the Committee on Co-operation with Other Organizations and served on the Committee on Indeterminate Sentence and Release on Parole. Henderson and Addams were Vice-presidents of the Institute for 1912-1913. Parmelee served with Pound on the Committee on Translation of European Treatises on Criminal Science. Ellwood (who was then writing on the sociological foundations of law (e.g. Ellwood 1910)) was a member of the Executive Board and served with Kellor on the Committee on Criminal Statistics. Addams, Kellor, and Thomas served (together with economist John R. Commons and botanist John M. Coulter) on the Committee on Crime and Immigration.<sup>17</sup> Grace Abbott later headed the Committee on Immigration and Crime.<sup>18</sup>

The most enduring outcomes of the 1909 meeting were mechanisms for publishing the results of interdisciplinary criminological research. Best known is the the Journal of

the American Institute of Criminal Law and Criminology. From the start, Ellwood and Henderson served with Pound on the editorial board. The Journal was a forum for early sociologists with interests in law and criminal behavior, and published articles by the following, among others: Edith Abbott, Grace Abbott, Emory S. Bogardus, Sophonisba P. Breckinridge, Ernest Burgess, Katharine B. Davis, Charles Ellwood, J.L. Gillin, Sheldon Glueck, Amy Hewes, Leta S. Hollingsworth, Maurice Parmelee, Jessie Taft, and Frederic M. Thrasher (Weinmann 1934).

In addition to the Journal, a committee<sup>19</sup> was established to translate and publish major criminological works from Europe. Pound, who was fluent in continental languages, was throughout his career an adamant advocate that American jurists must achieve greater understanding of criminological theory and research from Europe. In a short pamphlet (American Institute of Criminal Law and Criminology 1910: 3), the Committee outlined its activities:

The Committee ... has made careful investigation of the literature of the subject, and has consulted by frequent correspondence. It has selected several works from among the mass of material. It has arranged with publisher, with authors, and with translators, for the immediate undertaking and rapid progress of the task.

The Committee members were impressed with the extent to which Europeans were exploring the origins of and potential remedies for criminal behavior, but the Committee was equally struck by the general ignorance of this work in the United States, especially among lawyers:

All this has been going on in Europe for forty years past, and in limited fields in this country. All the branches of science that can help have been working, -- anthropology, medicine, psychology, economics, sociology, philanthropy, penology. The law alone has abstained. The science of law is the one to be served by all this. But the public in general and the legal profession in particular have remained either ignorant of the entire subject or indifferent to the entire scientific movement. And its ignorance or indifference has blocked the way to progress in administration. (American Institute of Criminal Law and Criminology 1910: 5).

If American students would not learn the European languages, Pound took pragmatic action to insure that at least the basic and most influential texts were available in English. Despite the potential for misunderstandings,<sup>20</sup> the committee produced nine volumes in the Institute's Modern Criminal Science Series from 1911 to 1917. These works included Cesare Lombroso's Crime, Its Causes and Remedies (introduced by Maurice Parmelee), Gabriel Tarde's Penal Philosophy, and Enrico Ferri's Criminal Sociology (introduced by Charles Ellwood). Pound provided the introduction to the

Institute's translation of The Individualization of Punishment by Raymond Saleilles.<sup>21</sup>

E.A. Ross and the Wisconsin Branch

Pound, with the assistance of Ross and Henderson, among others, set in motion an organizational framework for coordinated, interdisciplinary scientific study of law and criminology. Ross was especially taken with the program, particularly its import for progressive legal reform, and worked immediately to establish a state-level "branch" of the Institute in Wisconsin. Ross was a "quick study," and scheduled a state conference in Madison for November 26-27, 1909, only five months after the National meeting in Chicago. Ross wrote in late June to draw on Pound's expertise:

Now, can you not out of your fund of accumulated experience with the organization of a successful national conference give me some reflections and pointers, certain things to do or to beware of, which will be helpful to us here in putting through this smaller scheme of a state conference?<sup>22</sup>

Pound was central in Ross' thinking about the Madison conference, and invited Pound to be the keynote speaker:

My thought is to have you open the conference (with the aid of the governor and others) with a big address on "Causes of Popular Dissatisfaction with the Administration of Punitive Justice" on the forenoon session of the first day.<sup>23</sup>



Pound agreed to speak, and Ross kept him posted as details of the meeting were put in place. In October, Pound wrote to suggest a change of topic, proposing to speak instead on "The Ritual of Punitive Justice."<sup>24</sup> Ross responded happily to the new theme, commenting, "It ought to iron some of the quirks out of the strict-legal mind."<sup>25</sup> Ross invited Pound to be his overnight guest in Madison,<sup>26</sup> and Ross' subsequent reference to Pound's packing a "grip"<sup>27</sup> suggests that Pound planned to stay in Madison for the duration of the conference, most likely with Ross.

The published Proceedings of the Conference (American Institute of Criminal Law and Criminology, Wisconsin Branch 1910: 12), document Ross' central role, "the Conference was called to order by Prof. E.A. Ross, who stated briefly the purpose of the Conference . . . ." Pound presented his address on "The Ritual of Punitive Justice" (later published as the lion's share of the Proceedings). He observed that "American legal procedure is governed too much by ideas, conceptions and rules of a period of formal over-refinement" resulting in obeisance to the "ritual" of law and the defeat of justice (Pound 1910b: 46). Pound (1910: 53) concluded with a ringing call to reform:

We should be zealous to give the accused a fair trial, to see to it that his guilt is proved by evidence and brought within law, that he is not bullied and browbeaten, and that irrelevant

matters are not so used against him that he is convicted of a crime he did not commit because the tribunal finds he is a bad man. But too often, when we speak of a fair trial, we have in mind the sporting theory of justice and refer to a fair chance to win [a] bad case. No right to use the law to obtain a result contrary to the law should be tolerated, much less recognized. Finally we should be zealous to give him a fair tribunal.

Despite Pound's rousing call, Ross apparently lost interest in the Institute and its Wisconsin branch in the years following the meetings in Chicago and Madison.

In summer 1910, Ross made an extended tour to China (Ross 1911, 1923). His name was absent from the unpublished minutes of the Institute's 1910 meetings in Washington, D.C., although Pound was a vocal participant.<sup>28</sup> The program for the 1912 meetings in Boston does not include Ross' name (American Institute of Criminal Law and Criminology 1911). The published minutes of the 1912 Milwaukee meetings do not reflect an appearance by Ross, although his signature (with eight others) was published on a report issued by a committee (American Institute of Criminal Law and Criminology 1912: 217-227). Ross' term on the Institute's Executive Board expired in 1913 (American Institute of Criminal Law and Criminology 1912: 320), and no record indicating his continuing participation past that date was discovered by this researcher.<sup>29</sup> It is striking too that

Ross, a prolific writer, never published in the Journal of the American Institute of Criminal Law and Criminology.

Howard's Plans for a Branch in Nebraska

The same initial enthusiasm that marked Ross' early participation in the Institute and his effort in organizing a state branch in Wisconsin also struck in Nebraska. In January 1910, George Elliott Howard wrote to Pound:

We are thinking of trying to organize a state "Conference on Criminal Law and Criminology"; and I am writing to ask you to give us the benefit of your experience in creating the national organization. Will you kindly state what you advise as the right initial procedure?<sup>30</sup>

Both Ross and Pound replied to Howard's inquiries. Pound's supportive, itemized advice provides insight into the strategies he adopted when organizing the National meeting:

The important things in preparing for such a Conference are (1) a good committee of organization -- one that will work, command general respect, and be representative.

(2) Careful canvassing of the list of those who are to be invited, so as to secure a representative, well-balanced list of men who will come to learn, to confer with those in other professions, and to work for two days on reports, and not to exploit themselves.

(3) Careful selection of topics to be considered.

(4) Organization of sections or committees to confer upon and discuss the topics, report upon those that require study in view of local conditions, and make a report for general discussion in the Conference.

(5) A good committee on resolutions.

In preparing for the National Conference, we had a luncheon at the University Club at which about an equal number of lawyers, physicians, psychologists, teachers of sociology, and penologists came together and agreed upon the personnel of a committee of organization. As chairman of the Committee, the details fell on me, but I had an executive sub-committee to confer with. Professor Ross followed this plan in the Wisconsin Conference.<sup>31</sup>

Pound also counseled that "there ought not to be much in the way of set papers and addresses" save one with which to open the conference, and added, "I think I could get Professor Henderson or some such man to go out there to speak, if you want him."<sup>32</sup>

Ross sent Howard copies of campaign materials and a detailed account of his preparations for the Wisconsin conference. He encouraged Howard to move forward in Nebraska, and emphasized the important role sociology should play:

I am greatly pleased that you are about to take the initiative in getting together a Nebraska Conference on Criminal Law and Criminology. The movement ought to start from Lincoln and the Department of Sociology in the University ought to be the primary radiant point of activity in the matter.<sup>33</sup>

Ross concluded:

My idea is that the first Conference should be wholly educational in its purpose -- to impress the mind of the participants and to turn the thoughts of the public toward criminal law reform. Then let the interim committees do careful work, each on the topic submitted to it, and bring in specific recommendations of legislation for Nebraska.<sup>24</sup>

Despite the helpful support of Pound and Ross, the Nebraska branch of the Institute never materialized. Nebraska's energy went instead to hosting the annual meeting of the American Prison Association, held in Omaha, October 14-19, 1911.

The keynote address in Omaha was given by none other than Charles Henderson, who was then Past President of the 1910 International Prison Congress. Henderson spoke on "The Resolutions of the 1910 International Prison Congress in Their Application to the United States" (American Prison Association 1911: 7). Although Lincoln hosted the prison conference in 1905, it lost out in 1911 to Omaha where an effective "Committee of One Hundred" was organized to sponsor the event. Howard and the Department of Sociology in Lincoln played no discernable role in the week-long Omaha meeting of penologists, wardens, and prison chaplains.

For reasons not fully pursued in the course of this research, the initial interdisciplinary focus of the

American Institute of Criminal Law and Criminology narrowed as the years passed. Ross' interests moved in other directions. By 1930, although Pound was still a member, Pound was no longer a central figure. The Institute's translation projects were concluded in 1917, and Pound stepped down from the editorial board of the Journal. With Pound's move to Harvard in 1910, he left the midwestern core of the Institute's support in Illinois and Wisconsin. His guiding influence was no longer close at hand. Further, in the 1920s, many of the sociologists who originally supported the Institute were organizationally redefined as "social workers" and pushed out of sociology, and/or were labeled "unscientific" and were intellectually dismissed (Deegan 1988c: 309-328). The Institute's 1930 membership list included no known sociologists.<sup>35</sup>

The Journal of Criminal Law and Criminology is still published today, now under the sponsorship of the Northwestern University School of Law. After a long flirtation with criminal forensics and police investigation techniques (starting in the 1930s), the Journal returned in 1974 to an emphasis somewhat closer to Pound's original, sociologically-informed vision. Although Wigmore's part in founding the journal is often recalled (e.g., a special "Wigmore" issue in 1941; Gault 1951), there was no notice or obituary in the Journal when Pound died in 1964.

Pound's Enduring Relationships with Ross and Howard

The three-way collegial relationships between Pound, Ross, and Howard remained cordial during the years following the founding of the Institute of Criminal Law and Criminology. Numerous letters exchanged between Howard and Ross from 1907 to 1923 reflect their mutual admiration and support of each other's work.<sup>36</sup> Pound and Howard also corresponded, but the archival record is sparse.

Pound and Howard discussed marriage law reform in June 1910, and Howard wrote in November to congratulate Pound on his appointment to Harvard.<sup>37</sup> In 1914, Howard asked for Pound's expertise on a question raised during earlier discussions in Lincoln:

May I make a slight draft on your rich stores of knowledge regarding the history of English jurisprudence? Did the English courts ever exercise the constitutional veto on acts of parliament? I think I remember that once in a paper read before a meeting of the little club to which we belonged you cited one or more cases of such veto . . . .<sup>38</sup>

Howard thanked Pound for the many papers sent to him by Pound over the years, noting "I find them a constant aid in my studies." In return, Howard sent Pound a copy of his extraordinary syllabus on "The Family and Marriage" (Howard 1914).<sup>39</sup> That syllabus, sent in 1914, marks the last archival record of correspondence between Howard and Pound.

Ross remained an enthusiastic admirer of Pound's work, and they interacted further as members of the American Sociological Society (discussed below). Their relationship took a distinctly personal turn when Ross sought Pound's counsel in February 1919 regarding the choice of a professional career for Ross' son, Frank. Ross wrote:

I have put much thought upon the problem of his life work. I should like to get him into something that he will look back upon with as much satisfaction as I do upon my own work. In other words, I want him to serve society and aid social progress, not merely achieve an individual success. For a long time, I have had the idea that by fitting himself to teach law in the spirit in which you are teaching it at Harvard, he would have a fine opportunity to be of real use.<sup>40</sup>

Pound prepared a thoughtful, encouraging response on opportunities in law. He began, "I feel confident that there is going to be a great opportunity for law teachers with modern training and modern outlook."<sup>41</sup> Frank Ross subsequently enrolled at Harvard, from which Pound sent a glowing report to E.A. Ross in 1923 about his son's progress in the Law School.<sup>42</sup>

It was during this period that Ross completed his Principles of Sociology, based in part on articles written for the American Journal of Sociology.<sup>43</sup> Ross sought Pound's advice in December 1919 on the brief remarks devoted to the



institution of law.<sup>44</sup> The dedication of the book (Ross 1920: v) reveals Ross' profound admiration:

TO  
 ROSCOE POUND  
 Dean of the harvard Law School  
 Prince of Law Teachers  
 and  
 Builder of Sociological Jurisprudence  
 This Book is Dedicated

Ross considered Pound an honest and forthright leader, one under whose guidance he would gladly serve.

In 1923, Ross again tried to lure Pound to Wisconsin, this time to become the executive officer of the University. Ross wrote:

There are a number of people here who would like to see you President of the University of Wisconsin. I am writing now just to find out this. Is it a post that you would be inclined to consider if it were offered you?<sup>45</sup>

Pound expressed clear and definite interest:

The proposition in your letter of April 18 appeals to me not a little. I had expected to devote the rest of my days to the Harvard Law School, which is undoubtedly a national institution and big enough for any one's whole efforts throughout life. Accordingly I had twice refused appointment to the bench here, feeling that I had made a binding election as to my vocation. But Wisconsin seems to me just now to be the hope of education in this country. Pretty much everywhere else things seem to me to be getting so thoroughly under control that presently our great educational endowments may

find themselves in the position of sixteenth-century monastic endowments, and meet a similar fate. Moreover, I am essentially of the West and can never feel at home in this part of the world. Certainly I should give prayerful consideration to your suggestion.<sup>46</sup>

Pound's name went forward to the Board of Regents, and in January 1925 an offer was extended to Pound.

Confidence in Pound's acceptance ran high, as reflected in local newspaper accounts whose headlines proclaimed "President-Elect Roscoe Pound" and "Acceptance Certain."<sup>47</sup> Ross was interviewed by the Wisconsin State Journal and gave a rousing estimate of Pound's character and abilities. Pound concluded, however, on the basis of "confidential advice" from Wisconsin, "that I should be regarded as the choice of a party, and as such have to expect political difficulties in the near future."<sup>48</sup> It must have been a disappointing moment for Ross when Pound declined. There is an hiatus in the archival record of their correspondence after 1925 until the the 1930s, when they exchanged intermittent and cordial communications (including a buoyant invitation by Ross in 1938 asking Pound to bunk with him on a voyage by steamer to Australia, which Pound graciously declined.)<sup>49</sup>

In May 1940, the Department of Sociology and Anthropology at the University of Wisconsin hosted a dinner in honor of Edward Alsworth Ross at which a portrait of Ross, a gift to the distinguished Wisconsin sociologist, was unveiled. Pound was invited,<sup>50</sup> but was unable to attend. He did, however, contribute funds toward the portrait and sent the following message:

My association with Professor Ross at the University of Nebraska, and the friendship thus formed, I value as one of the outstanding events in my academic life.<sup>51</sup>

Pound's accolade highlighted his long personal and collegial association with a founder and major architect of American sociology.

## PART II

### ROSCOE POUND AND THE AMERICAN SOCIOLOGICAL SOCIETY

#### Introduction

Roscoe Pound lent his interest and support to several projects and organizations during his career. Several intended to advance social scientific research, not the least of which was the American Sociological Society, through which Pound struck up a long friendship with Albion Small. Pound affiliated with several progressive groups,

bringing him into contact and coalition with leading sociologists who intended that sociological research and the application of that research to practical problems should go hand in hand. These groups included the National Consumer's League, to which Pound contributed an analysis of minimum wage legislation (Pound 1925a) and in which he was an Honorary Vice-president. The Consumer's League aligned him with sociologists Jane Addams, Susan Kingsbury, and Florence Kelley.<sup>52</sup>

Support for activities associated with the Chicago School of Civics and Philanthropy aligned Pound with Edith Abbott and Sophonisba Breckinridge, who asked him to accept a speaking engagement in 1912.<sup>53</sup> In 1914, Breckinridge asked Pound to serve on a committee appointed by the School's trustees to "look into the whole subject of training for social and civic work."<sup>54</sup> In 1916, Breckinridge wrote, "It is wonderful to think that you have taken the Chairmanship of the National Conference of Charities and Correction," and asked him to open the Conference to an examination of judicial injustice in the South.<sup>55</sup>

Pound was on the General Administrative Council of the American Association for Labor Legislation, as were Sophonisba Breckinridge and Charles Henderson; Jane Addams was a Vice-president.<sup>56</sup> Related interests by Grace Abbott,

in her position as Director of the Child Labor Division of the Children's Bureau at the U.S. Department of Labor led her to seek (and receive) Pound's legal analyses of labor legislation.<sup>57</sup> Pound's influential support for and defense of the Keating-Owen child-labor bill placed Pound squarely in line with Grace and Edith Abbott.<sup>58</sup>

Links to other groups are suggestive. For example, George Herbert Mead nagged Pound for special contributions to the Chicago City Club (in which Pound maintained a membership), long after Pound moved to Cambridge.<sup>59</sup> A letter from Paul Kellogg documents Pound's extended interest in projects undertaken by The Survey.<sup>60</sup> Pound's connections with the New School for Social Research are noted in Chapter 9. In general, Pound's associational memberships show him to be an active, reform-minded progressive, in concert with many like-minded sociologists. However, in as much as Pound's participation in the American Sociological Society, together with his long friendship with Albion Small, speak directly and efficiently to Pound's disciplinary commitment to sociology per se, Pound's varied and energetic participation in the other organizations named above are not pursued in depth in the present investigation.

### Albion Small and the American Sociological Society

Active participation in the American Sociological Society (now the American Sociological Association) is a significant indicator of disciplinary affiliation and commitment to sociology, especially during the first half of the twentieth century. Coinciding with his move to Chicago, Pound joined the American Sociological Society sometime after 1906, but before 1910.<sup>61</sup> Ross and Howard were early members, as was Albion Small, the first President of the Society (founded in 1905). These men presumably influenced Pound's decision to join the society. Pound remained a member until at least 1931, but dropped out some time prior to 1939.<sup>62</sup> During the intervening quarter of a century, Pound was an active participant in the Society's affairs. A chronology of the major events in Pound's association with the Society is provided in Figure 5.1.

Pound's removal from Nebraska in 1907 placed him in Chicago for three years (first at Northwestern's Law School and then at the University of Chicago Law School). In Chicago, Pound was at the heart of academic sociology in the United States. Albion Small was Chair of the Department of Sociology at the University of Chicago. During 1909-1910, when Pound taught in the Law School in Hyde Park, the University of Chicago Bulletin shows that his campus colleagues that year included Charles Henderson,

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**Figure 5.1**

**Pound and the American Sociological Society**

**(Significant Events)**

<u>Date</u>	<u>Membership</u>
1907-1909	Joins American Sociological Society
1931-1939	Membership lapses
<u>Date</u>	<u>Activities</u>
1909	<u>AJS</u> editor Small offers Pound ten pages in each issue of the <u>American Journal of Sociology</u> for use by the American Institute of Criminal Law & Criminology.
1910	In response to Pound inquiry, <u>AJS</u> editor Small accepts a paper by Pound for publication, but it was apparently published elsewhere.
1912	"Social Problems and the Courts," address, National Conference of Charities and Correction, Cleveland (June 12-19), heard by Charles Henderson who recommends it to <u>AJS</u> editor Albion Small who solicits paper for publication in <u>AJS</u> .
1912	"Social Problems and the Courts," published in <u>American Journal of Sociology</u>
1912	"Legislation as a Social Function," address, American Sociological Society, Boston (December 28-31).

Figure 5.1 (Continued)

<u>Date</u>	<u>Event</u>
1913	"Legislation as a Social Function," published, <u>American Journal of Sociology</u> and <u>Papers and Proceedings of the American Sociological Society</u> .
1914	ASS President Ross appoints Pound to ASS Committee on academic freedom (U.G. Weatherly, J.P. Lichtenberger, Roscoe Pound) to confer jointly with committees of the American Economic Association and the American Political Science Association (E.R.A. Seligman chairs joint committee), became AAUP Committee on Academic Freedom and Academic Tenure.
1914	ASS President Ross requests Pound to prepare paper on "Freedom of Speech in the United States Since 1890" for ASS meetings. Pound prepares it, but is not presented or published by ASS.
1916	"Juristic Problems of National Progress," address, 25th anniversary of the University of Chicago, Conference of the Departments of History, Sociology, Political Economy, Political Science and Philosophy (June 5). <u>AJS</u> editor Small attends, solicits paper for publication in <u>AJS</u> .
1917	"Juristic Problems of National Progress," published, <u>American Journal of Sociology</u> .
1917	Pound protests to <u>AJS</u> editor Small about publication of James H. Boyd's article "Socialization of the Law" in <u>AJS</u> .
1920	ASS President Dealey solicits Pound to give "the chief paper of the sessions" at the ASS meetings.



**Figure 5.1 (Continued)**

<u>Date</u>	<u>Event</u>
1920	"A Theory of Social Interests," keynote address, American Sociological Society, Washington, D.C. (December 27-29)
1921	"A Theory of Social Interests," published, <u>Papers and Proceedings of the American Sociological Society</u>
1923	ASS President Weatherly appoints Pound to ASS Committee on International Relations (Jane Addams, Jerome Davis, Roscoe Pound, Albion Small, H.A. Miller), committee prepares proposal and seeks funds for "A Survey of Foreign News: Sources and Distribution."
1924	ASS President Ellwood reappoints Pound to ASS Committee on International Relations (Jane Addams, Jerome Davis, Robert Park, Roscoe Pound, H.A. Miller).
1925	Pound protests to <u>AJS</u> editor Small about publication of Edwin E. Grant's article "Scum from the Melting Pot" in <u>AJS</u> .
1926	<u>Interpretations of Legal History</u> , reviewed in <u>American Journal of Sociology</u>
1931	Pound endorses Maurice Parmelee's proposals for "reform" of the ASS.
1942	<u>Social Control through Law</u> , reviewed in <u>American Sociological Review</u>
1945	<u>The Task of Law</u> , reviewed in <u>American Sociological Review</u>

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George Vincent, William I. Thomas, and Albion Small (Department of Sociology), Marion Talbott and Sophonisba Breckinridge (Department of Household Administration), and George Herbert Mead (Department of Philosophy). Of his Chicago acquaintances, Albion Small was probably the most significant, sociologically speaking.

The founding President of the American Sociological Society was Albion Small, and in 1907 he was Chair of the Department of Sociology at the University of Chicago, Dean of the Graduate School of Arts and Literature, and longtime editor of the American Journal of Sociology (then the official organ of the American Sociological Society). There was no more organizationally powerful figure in American sociology with whom Pound could have made contact. These two men found each other quickly in Chicago's intellectual circles. Pound met Albion Small in December 1908 (if not earlier) when Pound "read a paper before the Social Science Club at the University of Chicago on Liberty of Contract."<sup>63</sup> A lifelong association began; they borrowed books,<sup>64</sup> exchanged publications, squabbled over two articles Small elected to publish in AJS (Pound thought them "unscientific"),<sup>65</sup> corresponded about matters sociological almost until Small's death in 1926.<sup>66</sup> Pound's participation in the American Sociological Society is closely intertwined with Small's central position in the Society, and to tell

the story of one virtually necessitates the story of the other.

Small's admiration for Pound's work was positive from the first. After Small heard Pound talk in 1908, he wrote a short note to Pound:

I am greatly indebted to you for the six papers just received. I shall study them carefully and I shall also be on the lookout for the appearance of the paper which interested us all so much last Saturday evening. On my way home I reflected that after all one of the securest guarantees that the sort of evolution you were pleading for will in due time come about is the work that you yourself are doing in brushing cobwebs from the sky.<sup>57</sup>

As the years passed, Small's admiration only increased.

The two scholars exchanged copies of their work (as did Pound with Ross, Howard, Edith Abbott and others). In 1910, Small sent a copy of his The Meaning of Social Science.<sup>68</sup> Pound cited the book (e.g., Pound 1911-1912: 491, 504) as well as Small's General Sociology in his foundational three-part series on "The Scope and Purpose of Sociological Jurisprudence." Although Small followed the articles as they appeared, Pound forwarded a reprint of the series from the Harvard Law Review, to which Small replied in April 1912:

You give me a great deal more credit than I deserve, but for one who has been cast for a voice in the wilderness role, it is heartening to find that other voices in the wilderness are beginning to try to get within chiming distance and to form a chorus that is likely to give some concert before it quits. I foresee that the section of the wilderness which you have particularly cultivated will be a difficult one to bring to fertilization, but the world do move, and you will be able to note its progress as we have in general sociology.<sup>69</sup>

Pound sent reprints of his work in 1914,<sup>70</sup> 1916,<sup>71</sup> 1920,<sup>72</sup> 1921 (on three separate occasions),<sup>73</sup> and 1924.<sup>74</sup> In each instance, Small acknowledged receipt and praised Pound's insight and scholarship.

Likewise, Pound paid close attention to Small's work. Small, for example, sent Pound a copy of Origins of Sociology in 1924,<sup>75</sup> to which Pound replied:

When your book Origins of Sociology was announced I promptly ordered and reread it in book form, having already read very carefully the articles in the [American] Journal of Sociology. When the copy came which you were good enough to send me, I substituted it on my shelves, for the one I had bought, and turned the latter copy over to the law library to be put on the shelves in my seminar room. The chapter on the Savigny-Thibaut controversy is something which I want all my graduate students to read.<sup>76</sup>

Their estimate that each other's work was mutually important characterized their interactions.<sup>77</sup>

In his Savigny-Thibaut article, Small analyzed the place of Roman law in European history, and cited Pound's

relevant work (Small 1923: 733). In an earlier letter, Small confided on receipt of an article by Pound:

Every time a document of this sort is put up to me I have renewed pangs of regret that I was not far-sighted enough to secure a law school course. I am trying to do penance by confessing the size of the gap which that failure left to as many graduate students in social science as possible. I hope more of them will in coming generations be advised before it is too late.<sup>78</sup>

To these expansive scholars, the idea that lawyers should study sociology, and sociologists study law, was taken for granted.

Small's overall estimate of Pound's mature sociological work was extraordinarily high, and it is only by a quirk of Pound's writing program that it did not see print in a prominent place. If one looks to Small's (1916) AJS article on "Fifty Years of Sociology in the United States," one finds no mention of Pound's work. Apparently sensing that his friend might feel slighted, Small wrote to Pound in July:

I feel guilty for not having said more to you about my reasons for not having touched in my sketch of the history of Sociology in the United States the more recent developments of which you are not merely magna pars but practically the whole thing. This was because if I did that I should have been obliged to evaluate a lot of people whose quantity in the equation the less said about the better. It struck me that it was my cue practically to stop with 1906, and to deal

with generalities with reference to everything later. I am hoping that when your book appears I can make that the subject of a supplementary discourse which will relive me of all obligations to discuss subjects of lesser moment, but will free me to utter my testimony about the tremendous significance of the movement that you have inaugurated.<sup>79</sup>

Small saw Pound's work as central to an accurate account of modern sociology, and planned to say so when Pound's planned book on sociological jurisprudence came into print. As matters developed, however, Pound never produced the promised book (Chapter 8), and thus the occasion of Small's public recognition of Pound's sociological centrality after 1906 never materialized.

#### Presentations and the American Journal of Sociology

During his membership in the American Sociological Society, Pound generally had ready access to the American Journal of Sociology. As early as 1909, he was offered space in AJS to further the interests and research of the new American Institute of Criminal Law and Criminology. Small wrote, "I most cordially join with Dr. Henderson in offering space in the [American] Journal of Sociology with the understanding that it should be used as your society would direct."<sup>80</sup> Had the Institute not inaugurated its own journal (based at Northwestern rather than the University of

Chicago) Pound, given his impending move to Hyde Park in autumn 1909, might well have become a section editor of AJS. In any event, his articles received ready acceptance in AJS under Small's editorship (Figure 5.1), with the exception of a paper prepared for the 1915 meetings -- a paper (paradoxically) that apparently did not fit Ross' agenda for his program on academic freedom.

E.A. Ross, President of the ASS, commissioned Pound to write a paper for the 1915 meetings on "Freedom of Speech in the United States Since 1890."<sup>81</sup> Pound's was to be the first paper of the first session, and all sessions of the meetings were devoted to the topic "Free Communication." Pound agreed to prepare the paper, but begged to be excused from presenting it. Ross replied, "Send it to me, and I will see that it is read by a good man or else read it myself."<sup>82</sup> Although Pound apparently sent it, it was not read. When Scott Bedford, ASS Secretary asked Pound to send "the manuscript which you doubtless prepared for the meeting" so that it might be published in the Papers and Proceedings of the American Sociological Society.<sup>83</sup> Pound replied, with apparent irritation:

I was under a most unfortunate misapprehension as to what was wanted on the program of the Sociological Society. Looking only at the title given to the subject in Professor Ross's letter, I had supposed that the whole field of what the lawyer would think of under the term "free speech

since 1890" was included. At the last moment I found that only a narrow piece of the subject was committed to me and only one side at that. This required rejection of all that I had done and entire reconstruction of the paper. by that time it became quite impossible for me to do the work over again. I had already written to Professor Ross that it would be absolutely impossible for me to go to Princeton in person and with the pressure of my work here doing the paper over again was an absolute impossibility.

Pound continued:

I do not believe it would be profitable for me to work my material over again to fit into your program. It would take quite a little time, which I could only devote with difficulty. To me the most significant and important thing is to get hold of the social and individual interests involved, to see exactly what they are, and to see how the eighteenth-century theory of natural rights and the attempt to safeguard as natural rights of individuals what are really largely social interests is leading to difficulties in the present, when on the one hand we have situations quite unthought of when our bills of rights were drafted and on the other hand are recognizing the interests involved for what they really are.

And, concluded:

If I get time to complete the matter according to its original design and you care to have it, I might some time send it to the [American] Journal of Sociology. I am not very particular about this, however, as I can make good use of it in other ways.<sup>84</sup>

Ironically, Ross' call for sessions on "freedom of speech" was so firmly conceived in his own mind that Pound's



evolving refinement of a "theory of interests" was not welcome in the form that Pound chose for exploration.

Pound never sent his original manuscript to AJS, but in 1915 and 1916 his articles on "Interests of Personality" and "Individual Interests in the Domestic Relation" appeared in the Harvard Law Review and the Michigan Law Review, respectively. In the meantime, Small placed Pound's (1917) "Juristic Problems of National Progress" in AJS, and in 1920, ASS President James Dealey (of Brown University) cajoled Pound to try again:

You have not favored us with a paper since 1912 and I wonder whether you would be willing to present the chief paper of the sessions, usually given at a joint meeting with one of the other associations

You are the leader among those who apply sociological principles to law and in these days of legal reconstruction you surely must have a message of deep significance.<sup>85</sup>

Pound, noting his busy schedule, reluctantly agreed.

The ensuing "comedy of errors" and misunderstandings are models of bureaucratic alienation. A clerk, apparently without authorization, signed Dealey's name to a letter on October 22, 1920, asking that advance copy of Pound's paper be sent by November 1st for typesetting prior to the December meetings.<sup>86</sup> Pound, who thought Dealey understood his time constraints, threw up the job and withdrew, "If I

cannot carry it out in my own way I must respectfully decline to do it all."<sup>87</sup> Dealey moved quickly, writing to Pound, "a clerk has apparently mixed things up. She had no business to write to you at all and I would suggest that you waste-basket the letter and forget it."<sup>88</sup> In the meanwhile, Pound received an even more insistent letter from Scott Bedford (the ASS Secretary) asking Pound to submit copy.<sup>89</sup> Pound wrote to Dealey that he was ignoring Bedford's request.<sup>90</sup> By return mail, Dealey concurred, "Don't pay any attention to requests from Chicago, and take your own time."<sup>91</sup> With Dealey running interference, the paper was presented, and he sent thanks to Pound for a "most excellent paper and for your kindness in preparing so excellent a study."<sup>92</sup>

Pound's paper, "A Theory of Social Interests," was published in the annual Papers and Proceedings of the American Sociological Society. The paper represented Pound's most advanced thinking to-date and was written especially for an audience of professional social scientists. The paper, personally invited by the President of the Society, was the featured keynote address of the 1920 meetings. Nonetheless, Pound's paper, inexplicably, was not subsequently published in the American Journal of Sociology as was common practice for the major papers at ASS meetings. "A Theory of Social Interests" is integral to Pound's

sociological analysis of law, and it was Pound's last paper for the American Sociological Society. Unfortunately, it became "buried" in the relative obscurity of the Papers and Proceedings.

### Pound's Committee Service

Organizationally, Pound twice served the ASS when called upon for committee duty. E.A. Ross wrote to him in 1914:

This is the only time in my life I am asking you for a favor, and this is what it is. I am President of the American Sociological Society, and I am appointing a committee to confer with similar committees of three representing the American Economic Association and the American Political Science Association on the subject of freedom of teaching and tenure of position of teachers of Social Science in American universities and colleges . . . . I am writing to ask if you will not consent to act as one of three men representing the American Sociological Society.<sup>93</sup>

Pound shouldered the assignment:

The whole subject of academic tenure and academic freedom is one in which I am greatly interested and although I am more than usually busy this spring and find it very hard even to answer letters, I should feel it a duty to do my share in a work of this sort.<sup>94</sup>

The work of the three interdisciplinary committees, coordinated by E.R.A. Seligman, charted historic waters, and it survives today as the committee on academic freedom within the American Association of University Professors.

The joint interdisciplinary committee issued a preliminary report in 1914, and at the January 1915 meetings of the American Association of University Professors "it was decided to take up the problem of academic freedom in general" (Committee on Academic Freedom and Academic Tenure 1915: 17). An expanded committee of 15 members was appointed, again including Pound, and Seligman was reconfirmed as Chair. Franklin H. Giddings, the noted Columbia University sociologist, also served. Parenthetically, the AAUP Council in 1915 included George Elliott Howard, and in 1916, E.A. Ross. The AAUP Committee on Academic Freedom and Academic Tenure (later called Committee "A") hammered out the foundational manifesto on academic freedom adopted by the AAUP in 1916 (Committee on Academic Freedom and Academic Tenure 1917: 20-43). The classificatory organization of the statement and its ordered appeal to (and analysis of) social interests is strikingly compatible with Pound's expository style and analytical approach. Among the thirteen signatures on this historic document is the name of Roscoe Pound, appointed initially by

E.A. Ross as a representative of the American Sociological Society.

In 1923, Pound was again tapped for committee work by the American Sociological Society. He agreed to serve with Jane Addams,<sup>95</sup> Jerome Davis, Albion Small, and H.A. Miller (Chair) on the ASS Committee on International Relations.<sup>96</sup> The minutes of the ASS annual business meeting in December 1922 record that Jerome Davis made the motion to establish a committee:

to study into the present methods used by our government in securing international information and also the way in which international news is gathered and given out to the American people by public and private agencies, and the possibilities of closer fraternal relations with sociological societies in Europe together with such other information or suggested changes as the committee thinks advisable. (Papers and Proceedings of the American Sociological Society 1923: 237).

The Committee, to which Pound was reappointed in 1924, designed and proposed "a survey of foreign news: sources and distribution" tentatively under the direction of Charles Merz.<sup>97</sup> At issue were the specific mechanisms and processes by which news about foreign governments is generated and reaches the American public. H.A. Miller, the committee Chair, launched a vigorous campaign for financial support for the project, but found no stable backers. Pound

participated at several points in the attempt to raise funds, without positive result. In the wake of the Red Scare, "sociology" was still a dirty word and Jane Addams, one of the Committee's members, was villified as a subversive radical (Deegan 1988: 317-323). Pound wrote to Miller in May 1923:

I might say to you that since I wrote to Mr. Davis I have taken the matter up with the trustees of an important fund and found that while there were individually sympathetic they hesitated to do anything apparently for fear of being accused of radicalism. As near as I can make out the word "sociological" scares them. In this part of the world that word is pretty nearly taboo just now. My strong conviction is that unless some single individual can be found with breadth of vision and courage enough to finance this it will have to be given up. I do not think any of the funds or foundations dare to do it.<sup>98</sup>

Jerome Davis reported in October 1923 that he "succeeded in raising six thousand dollars in pledges for the work . . . provided a total of ten thousand dollars is raised," and Pound agreed to speak with potential contributors as the campaign progressed.<sup>99</sup> By October 1924, however, the project floundered. Davis wrote to Pound, "Our investigation recently received something of a setback because of the publicity which it has received. One of the foundations which promised to aid us quite materially is

likely to back out."<sup>100</sup> Pound's last letter looked to the future, but saw the project presently stalled:

I am not at all surprised that one of the foundations that promised to aid you materially is likely to back out. I have found in talking with people about this project that it was almost impossible to make any headway, some being afraid of newspapers, some being afraid of opening up any such questions, and some being afraid of opening up any questions at all. I imagine we shall have to be patient and trust that presently more sensible and liberal notions will prevail.<sup>101</sup>

The final disposition of the survey is not reflected in either Pound's archival record or the published minutes of the ASS annual business meetings. The proposed survey apparently died a quiet, very much unfunded death. In any event, Pound's work for the Committee, and his earlier work as an ASS representative to what became the AAUP Committee on Academic Freedom and Academic Tenure demonstrated dedicated professional support of two major activities endorsed by the American Sociological Society.

#### Pound's Departure from the American Sociological Society

Pound's exit from the Society is cloudy, and occurred during the "revolution" against control of the Society by the Department at the University of Chicago in the 1930s (Lengermann 1979). In response to a letter from Herbert

Blumer in August 1931 encouraging Pound to attend the Society's next annual meeting,<sup>102</sup> Pound cited bureaucratic conflicts that already signaled his withdrawal:

I should like to attend the meetings of the American Sociological Society regularly, but have been unable to do so for many years because my first allegiance must be to the Association of American Law Schools, which has very generally been meeting at the same time but in a different place. Unhappily, this year again for the reason stated I shall be unable to attend the meeting. I could wish that a number of my colleagues could attend these meetings regularly, but they labor under the same difficulty confronting me.<sup>103</sup>

Later, in October, Maurice Parmelee drew Pound into the attack on Chicago's virtually total hold on the Society.

From Parmelee, whom Pound knew from earlier work in the American Institute for Criminal Law and Criminology, Pound received a proposal for "reforming" the American Sociological Society. The proposal underscored support for "scientific" study while de-emphasizing "practical" work within the Society. Parmelee specifically proposed that "the Society shall no longer strive to secure as large a membership as possible from philanthropic, religious, civic and social reform groups."<sup>104</sup> Revisions in program and nomination procedures, giving greater control to the membership as a whole, were outlined. In a particularly key maneuver, editorial control of American Journal of Sociology



was to be taken away from sociologists at the University of Chicago per se and "vested in the Society."<sup>105</sup> Parmelee also solicited funds to help print and mail the proposals to the 1600 members of the Society.

Pound's affirmative response was cautionary:

I will adhere to [i.e., sign] the communication to the members of the American Sociological Society.

I might say to you that I have no desire to make over the social sciences in the images of physics or biology. Having had a considerable experience in botany, I know that things are quite as much at large there as in the social sciences, and quite as much infected with practical problems. But the practical problems are not of such immediate and obvious social importance as to lead to general public appreciation of the situation. In other words, the biological sciences are not much more out of Egypt than we are but can get by where we cannot.

I do, however, appreciate thoroughly the importance of pure science in every connection, and that I take it is what you have in mind. Accordingly, I shall be glad to have my name appended to the circular. I should be glad to contribute my share of the expense.<sup>106</sup>

The archival record does not reveal that Pound understood he was subscribing purposefully to one of the undercurrents that resulted eventually in wresting partial control away from Chicago and the establishment of the American Sociological Review as the new, official journal.

Pound's sympathies were often congruent with many of the so-called "reformers" that Parmelee's proposal attacked. Nor did Pound think of practical sociologists as inherently anti-scientific. For example, 1931 marked the completion of numerous studies conducted by "practical" sociologists for the National Commission on Law Observance and Enforcement (Chapter 7). Pound, as a Commissioner, had insisted that these investigations follow rigorous scientific standards.

If his fellows in the American Sociological Society wanted to be equally rigorous in their work, Pound supported them. But, he warned that sociologists were mistaken if they thought that by simply dropping the "practical" dimension of their work they would become more akin to "real scientists" in the natural sciences.

Sometime after 1929 (the date of the last membership list published in the Papers and Proceedings of the American Sociological Society) but before 1939 (the date of the first membership list published in the American Sociological Review) Pound allowed his ASS membership to lapse. The direction taken by modern sociology was not to his liking, and he thought the "new" sociologists were overly concerned with method when they ought to focus on substance. As a professional organization, the American Sociological Society was no longer relevant to his continuing work in sociology. This estimation apparently cut both ways. Although two of

Pound's books were subsequently reviewed in ASR, the journal carried no obituary notice when Pound died.

### PART III

#### SOCIOLOGY AT HARVARD

##### Introduction

Unlike the University of Nebraska, where sociology at the turn of the century was in the capable and energetic hands of the likes of Edward A. Ross and George Elliott Howard, or in Chicago where Albion Small captained the discipline's most powerful academic department, sociology at Harvard lost its intellectual vitality around 1901:

Sociology at its inception embodied a widening scope and a significant change of method within academic economics itself. It served as a forward wing of a great advance in economic thinking at Harvard. In time, however, the whole Economics Department came to accept the innovations advanced by sociology. Then, because it had not developed a method or subject matter unique to itself, sociology at Harvard atrophied. The word "sociology" first appeared in the Harvard College Catalogue in 1891 as part of the course title of Economics 3, "The Principles of Sociology -- Development of the Modern State, and of its Social Functions." Although the Department of Economics continued to offer this basic course for forty years, no supplementary undergraduate courses in formal sociology appeared. Not until 1931 did Harvard College form an independent Department of Sociology. Only in the first ten of these forty years

[1891-1931] was sociology a vital and contributing factor in the development of economic thought. (Church 1965: 18-19).

Talcott Parsons did not arrive at Harvard to teach economics until 1926 (Martel 1979: 611), and Pitirim Sorokin was not called to Harvard until 1930 (Sorokin 1963). These were important disciplinary dates, as Johnston (1986: 107) notes: "The early history of Harvard sociology is closely entwined with the careers and personalities of Pitirim Sorokin and Talcott Parsons" (see also Johnston 1987). In sharp contrast to Pound's lively experiences at Nebraska, there was a sociological vacuum at Harvard when Pound arrived to become the Story Professor of Law in 1910. When Pound accepted the appointment at Harvard, he had been a law professor at the University of Chicago for less than a year. In going to Harvard, Pound left the acknowledged center of American sociology and fell, structurally speaking, into a sociological void.

At Harvard, the bulk of Pound's professorial duties were discharged solely in a self-contained professional school. In the Harvard Law School, he taught many courses in the "nuts and bolts" of legal practice as well as his theory-oriented courses in sociological jurisprudence. Few social scientists per se benefited from his classroom

lectures on sociological topics (Sheldon Glueck is perhaps the best known exception, see Chapter 6, Part II).

Nonetheless, the sociological imprint made on Pound's Harvard law classes was strong. At the zenith of his fame as a Harvard Law School professor, Pound (1944: 22) wrote:

I am now in my forty-fourth year of teaching jurisprudence, and for forty of those years have taught it from the sociological standpoint.

The sociological content of Pound's law lectures is evidenced by his lecture notes<sup>107</sup> and in transcriptions made by his students.<sup>108</sup> His discussions included observations on Comte, Tarde, Ward, Small, Marx, Ross, and many other sociologists. A concise summary of Pound's major points, together with a list of recommended readings, is found in Pound's (1943a: 28-39) Outlines of Lectures on Jurisprudence. His perspectives on the relations between sociology and law are presented more fully in Chapter 8.

When Pound came to Harvard he was, structurally speaking, in a difficult place with regard to sociology. He was situated in a professional law school in a university without a department of sociology. There were no sociology graduate students to join the inherently interdisciplinary adventure of his Seminary on Sociological Jurisprudence.

There was no Ross or Howard, no congenial group of sociologically-oriented colleagues with whom to dine and explore sociological issues.

In choosing Harvard over Chicago, Pound found the means to achieve his primary objective of making an impact on the law. Harvard represented the pinnacle of legal education, it was his law school alma mater, and a professorship there in part vindicated his sociological approach to jurisprudence. In 1929, Jessie Bernard (1929: 63) noted briefly that, "at Harvard, law students have been given a sociological orientation by Dean Roscoe Pound, and his influence extends far beyond Harvard University." Through his role as a Harvard law professor, Pound structurally altered the course of judicial practice in the United States. As Bland (1973: 51) observed, because of such thinkers as Pound and such jurists as Holmes, Brandeis, Cardozo, Stone, and Frankfurter, "sociological jurisprudence had become the "official doctrine" of the Supreme Court of the United States after 1937." In terms of jurisprudence, Pound made exactly the right choice in going to Harvard. In terms of sociology, however, Pound deserted the discipline's organizational center of power by leaving Chicago.

At the peak of the Red Scare (Deegan 1988c: 319-320), Pound's isolation at Harvard from organized sociology intensified. In an exchange of letters with Albion Small in

1919, Pound asked, "What is going to become of sociology in our American universities? Here it is taboo, and I gather in other places it has got to let vital social problems severely alone or move on."<sup>109</sup> Small responded, interestingly, by acknowledging his own sense of isolation and struggle:

When I look over the ground in a completely impersonal way, my reaction about the prospect coincides with yours. I feel myself estopped from letting that be my last reaction, however, because for twenty-seven years, by an initial and persistent fluke of exceptional proportions, I have had probably more scope than any other academic man in the United States to make the most of myself as a sociologist, and the most of sociology as a division of labor. The meagre results simply demonstrate my limitations rather than external hindrances.

During all this time I have been aware that, if an Australian ballot could have been taken, a large majority of our faculty would have voted to abolish Sociology as a "non-essential occupation" or worse.

Small hypothesized that many of his colleagues caved into this pressure:

Instead of being willing to stick heroically to studies that could hold their heads up in any scientific company, a considerable contingent of us have been willing to purchase academic tolerance by peddling piffle. I have often wondered whether the present academic situation is not about what the sociologists deserved.

Small's outlook for the future was pessimistic:

I am most pessimistic about men to carry on the fight in the next generation. Admitting all the amateurishness and patchworked self-educatedness of the generation approaching the retiring age, I can't see where the youngsters are that are going to use the equipment we shall bequeath them in a way that will commend more respect than we have won. I am most depressed because I can't discover a man between the ages of 25 and 50 who comes anywhere near having the qualifications and attainments proportioned to his years which would justify me in recommending him as an understudy for my own job.

Small noted, however, that sociological methods had diffused into other disciplines, economics and law, and that this should give hope to Pound:

When it comes to law faculties, it seems to me a clear case of "you should worry." Not merely has Northwestern caught fire just where you struck the spark, but the revolution at Yale is such an obvious attempt to go you one better that you have no excuse for a moment's depression.

Despite his sour assessment of his own situation, Small saw sociology as an adventure, one he would take again:

One the whole, if I were once more 35, and with my present outlook had my pick of adventures, I would do it again. I believe there's as good a fighting chance along the sociological line as anywhere.<sup>110</sup>



Pound's response may have eased Small's doubts. Pound concluded that "piffle" was everywhere peddled, not just in sociology, and that the view ahead was positive if only the ground then under attack could be held long enough:

I do not think the sociologists in our universities need feel conscientious scruples about having peddled piffle in the last generation. Perhaps the prime difficulty is that too much piffle has been peddled in every department and the sociologists who were feeling for solid ground in a new department were more apt to be dealing with something of the sort when they did not so intend than their colleagues in other departments. By and large I do not feel worried in the least. A generation is coming forward which was taught in the past 10 or 15 years which will make itself felt. In fact, the phenomenon to which you refer, namely, the obvious working of a sociological leaven on all sides in reality stands as the great achievement of the sociologists. What I fear is that for a time the forces of reaction will stifle work of this sort in our institutions of learning, and that a deal of what has been achieved in the immediate past will have to be done over again. For example, you speak of some things which I seem to have been able to do. But between you and me my own tenure is not too secure, and nothing short of the hardest kind of fighting year in and year out in the American Bar Association will keep alive the spark which I kindled there in 1906.

The moral is that you and I must keep our armor on and keep striking good hard strokes and must not allow the reactionary movement in our universities to silence us for a moment. The next ten years are likely to be times that will try men's souls in American universities.<sup>111</sup>

Thus, far from the center of sociology in Chicago, and feeling his own sociological perspective in jeopardy, Pound labored at Harvard to instill his views in the coming generations of jurists. When opportunities to pursue sociological discussion surfaced on occasion in Cambridge, it is not surprising that Pound reached out to them.

#### The Cambridge Scientific Club

When opportunities for collegial, interdisciplinary exchange became available at Harvard, Pound did his best to take advantage of them, but none matched the intensity of his sociological indoctrination at Nebraska, or the progressive interdisciplinary vitality that Ross offered Pound at Wisconsin, or the sociological powerhouse at Chicago. Faintly reminiscent of the "congenial Ten" in which Pound and Ross had exchanged views in Lincoln, Pound was elected in 1915 to the Cambridge Scientific Club (a small group of fourteen scientists who met periodically to discuss scientific ideas and new discoveries). Taking a criminological topic, Pound spoke on "Types of Murderers" at a meeting in 1916.<sup>112</sup> Unlike Nebraska's "congenial Ten," however, there was no cluster of sociologically-oriented intellectuals in the Cambridge group.

### L.J. Henderson and the Pareto Seminar

An opportunity to meet with scholars pursuing sociological ideas at Harvard arose in 1933 when Lawrence J. Henderson (the Abbott and James Lawrence Professor of Chemistry) solicited Pound's participation in a seminar on the works of Vilfredo Pareto.<sup>113</sup> Henderson, an accomplished physiologist, was an interdisciplinarian, as evidenced by his subsequent book on Pareto's General Sociology (Henderson 1935). Indeed, Barber (1970), in a volume in the Heritage of Sociology Series, advances the case that Henderson was in fact an influential, but unrecognized, sociologist.

Pareto's work interested Pound, inasmuch as he wrote a memorandum in 1922<sup>114</sup> to remind himself to purchase a copy of Pareto's Traite de Sociologie Generale, which he subsequently obtained (see entry under Pareto in Appendix E). In the late 1920s, Henderson also became interested in Pareto (Barber 1970: 5) and organized a seminar in 1932 that included the young George C. Homans (Barber 1970: 44) and Henderson's Harvard colleague, Talcott Parsons, and other Harvard scholars (Barber 1970: 40). Despite a heavy teaching load in autumn 1933, Pound enthusiastically accepted Henderson's invitation and arranged his schedule to reserve Friday afternoons for the seminar.<sup>115</sup> Unfortunately, Pound's plans went awry. He became entangled in unexpected teaching responsibilities (due to the

unavoidable absence of a fellow Harvard law professor) during the first part of the term. Pound regretted this development and expressed hope that he could join the seminar later, if Henderson would still have him.<sup>116</sup> Whether Pound was eventually able to clear his schedule is not known to this researcher.

#### N.S. Timasheff and the Sociology of Law

Five years later, in 1937, Pound became familiar with Nicholas S. Timasheff's work on the sociology of law. Timasheff, who came to Harvard in 1936, submitted his book manuscript for Sociology of Law to the Harvard Committee on Research in the Social Sciences for publication consideration. In 1937, Pound was asked by the Committee to review Timasheff's manuscript before deciding whether to subsidize its publication.<sup>117</sup> Pound accepted the assignment,<sup>118</sup> and undoubtedly recommended publication. He later judged Timasheff's (1939) Sociology of Law as the best discussion available in English.<sup>119</sup>

Pound was thus well aware of Timasheff's ideas when Pound wrote to him in 1938:

I notice by the catalogue that you are giving a course in sociology of law. For nearly forty years now I have been at work upon jurisprudence from the sociological standpoint. Evidently our lines at least converge somewhat and I should be

glad if I might make your acquaintance and perhaps be able to talk with you about the things in which we are both interested.<sup>120</sup>

Timasheff first offered An Introduction to the Sociology of Law (Soc 2) and a research course on Sociology of Law (Soc 20t) during 1938-39. There were clear grounds for collegial interchange between Pound and Timasheff, but the extent of any conversations between them was not discovered by this researcher. Campus contact between these two major theorists in the sociology of law was not fated to last long. Timasheff left in 1940 to accept a position on the graduate faculty at Fordham University. Pound, however, took up Timasheff's lead by later teaching the sociology of law courses that Timasheff established at Harvard.

Pound's encounter with Timasheff's ideas came at a time when Pound began reviewing the link between sociology and jurisprudence, and marked the start of a new era in Pound's contributions to sociology. In 1907, Pound felt that lawyers should keep in close touch with sociology, but by 1938 Pound saw little in modern sociology to justify its utility for jurisprudence. He wrote to Ross in 1938:

I do not see any men at work in the subject [sociology] today doing the things which you and Small and sociologists of that generation did to make sociology worthwhile for the student of jurisprudence.<sup>121</sup>

In the same letter, Pound wrote:

I am sorry not to have known about your autobiography. I shall get a copy at once. But what particularly moves me is that you are getting out a new edition of your Principles of Sociology. I shall be eager to see it. Contemporary sociology seems to me to have run off too much into neo-Kantian logicism, and consequently to be worrying about terminology and methodology rather than the things which call for terminology and methodology.<sup>122</sup>

In the course of thirty years, Pound's thinking moved from an all-embracing appreciation of sociology to a sharp critique of the continuing relevance of the discipline. Having read Timasheff's manuscript, and looking forward to Ross' revision of the Principles, Pound entered the sociology lecture halls at Harvard and accepted the invitation of Georges Gurvitch to write a treatise for a major symposium on the state of modern sociology.

#### Georges Gurvitch and the Sociology of Law

During the period 1937 to 1944, Pound made the acquaintance of the French sociologist, Georges Gurvitch. Gurvitch, a Professor at the Universite de Strasbourg who wrote extensively on the sociology of law, asked for<sup>123</sup> and received Pound's help in securing support and a position in the United States during World War II.<sup>124</sup> While at the New School for Social Research in New York, Gurvitch established

the Journal of Legal and Political Sociology (an American continuation of Gurvitch's Archives de Philosophie du Droit et de Sociologie Juridique). The first issue appeared in October 1942.

The six-member editorial board of the Journal of Legal and Political Sociology included Roscoe Pound, Karl Llewellyn, Robert Lowie, Robert MacIver, T.V. Smith, and Gurvitch. The project's participants comprised a "Who's Who" of American sociology. The thirty-eight-member advisory board included Harvard sociologists Talcott Parsons and Pitirim Sorokin, as well as Howard Becker, Ernest W. Burgess, Charles Ellwood, Robert Merton, Edward A. Ross, Edwin Sutherland, and Florian Znaniecki. The first issue featured articles by MacIver, Llewellyn, Gurvitch, David Riesman, Parsons, Merton, and Kingsley Davis. In 1944, Nebraska sociologists J.O. Hertzler and Paul Meadows contributed papers (Meadows repeated in 1947), and subsequent issues included work by Sorokin, Timasheff, and other noted sociologists. After Gurvitch's post-war return to France, however, the Journal of Legal and Political Sociology ceased publication (and was in essence replaced by the Cahiers internationaux de Sociologie, which Gurvitch edited).

During the war years, Pound supported Gurvitch's applications for positions and projects on several

occasions.<sup>125</sup> For example, when a publisher agreed to bring out an English translation of Gurvitch's Sociology of Law (Gurvitch 1942) only if Pound would endorse the project by writing the preface, Pound agreed to write it (Pound 1942).<sup>126</sup> In 1943, Gurvitch put together a proposal to publish a symposium on "Twentieth Century Sociology," and asked Pound to write the chapter on sociology of law. The symposium was a major project through which Gurvitch questioned "the relation of empirical sociology to theory" (Balandier 1974: 4).

Of Gurvitch's various schemes, it was his proposed symposium volume that most caught Pound's imagination. In September 1943, he wrote to Gurvitch:

I have undertaken a good many things and hesitate to take on anything more, but your symposium on Twentieth Century Sociology seems to me so important that I do not see how I could conscientiously refuse.<sup>127</sup>

In March 1944, Pound reported that his assigned chapter was on schedule and "is going forward well."<sup>128</sup> Gurvitch received Pound's draft a few weeks later. Gurvitch wrote in April 1944 to congratulate Pound on his efforts:

Let me thank you very cordially for your magnificent paper on Sociology of Law, which I believe will be the best chapter of the Symposium.<sup>129</sup>



This was no little praise for a contribution (Pound 1945) published in the company of discussions authored by Ernest Burgess, Talcott Parsons, Howard Becker, Pitirim Sorokin, Florian Znaniecki, and Robert Merton (cf., Gurvitch and Moore 1945).

Arrangements were made for Gurvitch to come to Harvard in the summer of 1944, but these were postponed when Gurvitch suffered a heart attack.<sup>130</sup> Pound lamented, "I had looked forward to your being here with us this summer."<sup>131</sup> By autumn, however, Gurvitch moved to Cambridge, and offered a course at Harvard on Social Control (Soc 2c).<sup>132</sup> A note from Gurvitch to Pound in November 1944 thanked Pound for his "cordial reception,"<sup>133</sup> but the extent of their face-to-face campus exchanges was not uncovered by this researcher. Although Gurvitch wanted to remain longer in Cambridge, funds for the spring quarter were already committed to another scholar, and thus Gurvitch returned to New York.<sup>134</sup> He later wrote fondly to Pound that, "I have very agreeable souvenirs about the Harvard surrounding [sic]."<sup>135</sup> In 1945, Gurvitch was able to return to France where he founded the Centre d'Etudes Sociologiques (Balandier 1974: 5).<sup>136</sup> Though intellectually significant in Europe, Gurvitch was now outside the structural networks of American sociology.

The two sociologists at Harvard -- Timasheff and Gurvitch -- with whom Pound shared mutual interests in the sociology of law remained in Cambridge only briefly. Gurvitch visited but one term, and Timasheff left only two years after Pound first made contact with him. The structural potential for even a small community of scholars focused on the "sociology of law" at Harvard was short-lived. Pound's professional links to Harvard sociology were enlarged bureaucratically after 1941 when Pound taught courses in the Department of Sociology.

#### Roscoe Pound, Professor of Sociology

Pound retired from the Deanship of the Law School in 1936 after twenty years of service in that role. He was then appointed Harvard's first University Professor, which allowed him to teach not only in the law school, but also in the school of Arts and Sciences (Sayre 1948: 393-394). This new status allowed Pound to offer virtually any subject he chose to teach. On the basis of this new bureaucratic arrangement, Pound ventured formally into the sociology classroom. When Timasheff left Harvard in 1940 (Timasheff and Theodorson 1976: 334), an opportunity opened for Pound. During 1941-42, Introduction to the Sociology of Law (Soc 2) was taught at Harvard by Hans Kelsen. Kelsen was a "refugee scholar" from Europe whom Pound helped obtain posts at

Harvard and elsewhere (Chapter 9). Simultaneously, Pound put in his hand to teach the advanced research course (i.e., directed readings) in Sociology of Law (Soc 20t) for interested students.

### Doctoral Committees in Sociology

The research course took a satisfactory turn. When one of Pound's first students in Soc 20t neared his doctoral examination, Pitirim Sorokin asked Pound in November 1941 to sit on the examination committee. Sorokin noted that one of the candidate's fields was "Sociology of Law" and observed that the candidate "has done almost all his research under your direction."<sup>137</sup> Pound responded enthusiastically, "I have a high opinion of Mr. Luke M. Smith from what I saw of him while he was reading under my direction."<sup>138</sup> The committee consisted of Sorokin, Parsons, Pound, and Loomis. The examination covered the fields of "Sociological Theory, Sociology of Law, Social Organization and Rural-Urban Sociology," and the works of Aristotle, Machiavelli, Montesquieu, Tonnies, Durkheim and Ehrlich.<sup>139</sup> With invitations to sit on doctoral examining committees as tangible evidence, it is clear that Pound's sociology teaching structurally drew the seventy-year-old scholar into the intellectual life of Harvard's ten-year-old Department of Sociology.

Sorokin's invitation established the pattern of Pound's subsequent service on doctoral examining committees in the Department of Sociology. For example, in March 1945, Pound was asked to serve with Parsons, Sheldon Glueck, and Sorokin on a doctoral examination committee. The doctoral candidate was examined over "Sociological Theory, Sociology of Law, Criminology, and Social Pathology," and the writings of "Plato, Ibn Khaldun, Vico, Durkheim, Tarde, and Sumner."<sup>140</sup> Later in 1945, Pound was again asked to serve on a committee chaired by Talcott Parsons. The committee, which included Parsons, Pound, Sorokin, and Zimmerman, examined a student over readings by Plato, Machiavelli, Hobbes, Pareto, Durkheim, and Cooley.<sup>141</sup> In 1947, Pound was again asked by Parsons to serve on a doctoral committee in sociology.<sup>142</sup>

#### Sociology of Law (Soc 20t)

The nature of Pound's research course in Sociology of Law (Soc 20t) is partially revealed in a surviving reading list prepared in 1945. Talcott Parsons, then Chair of the Department of Sociology, asked Pound to set a course of readings for a student in the Graduate School of Public Administration who was concentrating on studies in sociology and wished to emphasize the sociology of law.<sup>143</sup> Pound responded the following day with a reading list (Figure 5.2) and agreed to "talk with [the student] from time to time as

his reading progresses." Pound cautioned, however, "Unhappily, he cannot read German so some of the best things I should have liked to have him read are out of his reach." Pound also observed that, "You might think possibly that the fifteen items I have named make a pretty heavy program." Pound, however, assured Parsons that as several items were relatively short, "the list is not as long therefore as it looks. I have tried to present different views assuming that [the student] has a good foundation in sociology and economics."<sup>144</sup> With the exception of the German-language readings that Pound might have assigned, the list in Figure 5.2 likely reflects the character of Pound's research course in the sociology of law. Although both Timasheff and Gurvitch had departed the campus, they remained in Pound's advanced reading list.

#### An Introduction to the Sociology of Law (Soc 2)

Following his successful experience with Smith in the research course in 1941, Pound ventured into full-fledged classroom instruction in the Department of Sociology (Figure 5.3). In spring 1942, while reviewing copy for the upcoming schedule of courses for 1942-43, Pound wrote to Pitirim Sorokin (Chair of the Department of Sociology) to suggest a formal course of lectures:

I notice in the Announcement of Courses of Instruction for next year that I am down for a course in Sociology of Law. I shall be very glad to do this. Two ways of conducting such a course occur to me, depending somewhat on the type of student I am likely to have. My own preference would be to conduct a course in the ordinary way on the basis of Ehrlich, Horvath, Timasheff, and Gurvitch, with my own ideas with respect to each of them and my ideas of sociological jurisprudence as somewhat distinguished from sociology of law. But possibly you would prefer that I supervise reading of these books by students with informal conferences with them as in the case of Mr. Smith last year.<sup>145</sup>

Pound, at this point, was re-working his perspective on the sociology of law and saw teaching a regular course as a means to an end:

I should be glad to undertake it as it would compel me to think out some things in connection with sociology of law that need thinking about.<sup>146</sup>

The students in Pound's "introductory" course would be treated to his mature, probing reflections on the nature of the sociology of law.

Sorokin replied that the Department of Sociology was "delighted" to have Pound offer "a regular course," and added that it "would certainly be a great contribution on your part to the Department and to the Sociology of Law."<sup>147</sup> Hans Kelsen, who had been tentatively scheduled to teach Soc 2, was replaced by Pound.

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**Figure 5.2.**

**Assigned Readings for Pound's Sociology 20t, 1945<sup>148</sup>**

Dicey, Lectures on the Relation of Law and Public Opinion in England in the Nineteenth Century.

Holmes, The Path of the Law, 10 Harvard Law Review 467; also in Collected Papers, 167-202.

Ehrlich, Fundamental Principles of the Sociology of Law, translated by Moll.

Cardozo, The Nature of the Judicial Process.  
\_\_\_\_\_, The Growth of Law.

Timasheff, Introduction to the Sociology of Law.

Gurvitch, Sociology of Law, 68-197.

Pound, The Scope and Purpose of Sociological Jurisprudence, 24 Harvard Law Review 591; 25 Ibid. 140; 25 Ibid. 489.

\_\_\_\_\_, Fifty Years of Jurisprudence, 50 Harvard Law Review 559; 51 Ibid. 444, 777. The three papers are available in a reprint.

\_\_\_\_\_, Social Control Through Law.

\_\_\_\_\_, Sociology of Law and Sociological Jurisprudence, 5 University of Toronto Law Journal, 1.

Duguit, Les transformations generales du droit prive depuis le Code Napoleon.

\_\_\_\_\_, Le droit social, le droit individuel, et la transformation de l'Etat, 2nd ed.

Hauriou, La theorie de l'institution et de la foundation.  
See also the papers on Hauriou in 1931 Archives de philosophie du droit et de sociologie juridique.

Llewellyn and Hoebel, The Cheyenne Way, Part III.

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**Figure 5.3**

**Catalogue Listings of Pound's Sociology Courses at Harvard**

<u>Year</u>	<u>Course</u>	<u>Course Title</u>
1941-42	Soc 20t	Sociology of Law
1942-43	Soc 2	An Introduction to the Sociology of Law
	Soc 20t	Sociology of Law
1943-44	Soc 2	An Introduction to the Sociology of Law
1944-45	Soc 2	An Introduction to the Sociology of Law
1945-46	Soc 2	An Introduction to the Sociology of Law (Scheduled by later canceled)
1946-47	Soc 68	An Introduction to the Sociology of Law

**Note:** Shown are those courses that Roscoe Pound was scheduled to instruct according to the Harvard University Catalogue. Although listed in the Catalogue, the course for 1945-46 was later canceled at Pound's request.<sup>149</sup> After 1942-43, directed studies such as Soc 20t were lumped together under a generic course number and specific instructors were not indicated.

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When Introduction to the Sociology of Law was offered in 1942-43, Pound taught it in Emerson Hall (the quarters of the Sociology Department).<sup>150</sup> Soc 2, a coeducational course for both undergraduate and graduate students, attracted eighteen students (twelve from Radcliffe College and six from Harvard).<sup>151</sup> During the ensuing war years, however, enrollments became problematic. In 1943, Sorokin suggested that Pound might consider offering a reading course, "or not to give this course at all in any form" since the "the total number of students who want to take such a course is small, as in practically all courses, namely four."<sup>152</sup> The decision, left to Pound's preference and discretion, is not known to this researcher.

In late autumn 1945, Pound canceled his spring 1946 Introduction to the Sociology of Law due to an "emergency shortage of teachers" in the Law School that resulted in Pound teaching nine hours per week. Pound might be a University Professor, but his deepest loyalties rested with his sociologically-oriented teaching in the Law School, and to ongoing commitments to other projects. He wrote to Talcott Parsons (new Chair of the Department of Sociology):

I do not want to give up my course and seminar in Jurisprudence which has long been my particular teaching task as well as interest, and I must go on with Government 43, which although divided into 43a and 43b is really one course running through two terms. If I were to add Sociology 2,

it would make a teaching program of 11 hours a week, which would be quite impossible even if I did not have a good many other things pressing. For example, I am having to act as editor of the series of monographs for refresher courses put out for returning veterans by the Practicing Law Institute in cooperation with the American Bar Association.<sup>153</sup>

Parsons acknowledged Pound's predicament, and added, "We hope very much that it may be possible for you to offer the course again at a later time."<sup>154</sup>

In 1946, Pound saw his way clear to again offer Introduction to Sociology of Law, an offer that Parsons wrote "we are very glad to accept."<sup>155</sup> Parsons advised Pound that under the new reorganization of the social sciences programs, his course would be given a "Social Relations" course number, but that the course title would remain unchanged. The end of the war evidently resolved the enrollment deficit. In 1946, Pound's class roster for Introduction to the Sociology of Law (now Soc 68) shows seven Radcliffe students and twenty-nine Harvard students enrolled.<sup>156</sup>

The content of Pound's Introduction to the Sociology of Law is revealed in his handwritten lecture notes.<sup>157</sup> The course was organized under three major headings: (1) Sociology of Law and Sociological Jurisprudence, (2) The Lawyer's Idea of Law, and (3) The End or Purpose of Law.

The course pursued topics covered elsewhere in greater detail in Pound's formal writings (Chapter 8). If his lecture notes give an accurate impression, however, his lectures were typically more accessible than the concise, tersely economical prose of his professional publications.

Pound provided students with suggested readings throughout the course, but did not assign a textbook. In response to an inquiry in 1946, he wrote:

I shall not use any text in Sociology 2. There really is not any text in English which seems to me suitable. The best book in English is Timasheff. Professor Gurvitch's Sociology of Law is very hard reading, but the part dealing with the history and development of the subject is excellent. I recommend students to read these, and for the rest, call attention to some of my own articles in the legal periodicals, and depend upon lectures.<sup>158</sup>

Pound's assessment of student performance was made on the basis of hour examinations, a final examination, and, apparently, a written paper.

Pound was an exacting teacher who did not easily suffer mistakes of scholarship. The following extract from a letter to a disappointed student in Pound's Introduction to the Sociology of Law underscores Pound's standards and expectations:

Along with your examination book in Sociology 2, the proctor handed me a paper entitled "Cardozo's Conception of Law." Throughout the paper Mr. Justice Cardozo's name is wrongly spelled. I might have reckoned this an error of the typewriter if I had not noticed that in your notes, in your own handwriting apparently, there is regularly the same error. I note also that you speak of him as "Chief Justice" of the Court of Appeals of New York. It is, I suppose, relatively a trifling matter, but there are no Justices in that Court. Those who sit in the Court are Judges, and the presiding Judge is "Chief Judge." I mention these matters because they are typical of the too common carelessness and inaccuracy of students in the social sciences. Your paper is in many respects well written but lacks any real foundation in knowledge of what you are talking about.<sup>159</sup>

Pound's opinion of students trained in the social sciences may have discouraged all but the strong of heart from seeking his tutelage.

The last final examination for the course, given in January 1947, demonstrates the scope of Pound's expectations concerning student mastery of the course material. He set the following five questions:

1. Discuss the social functions of law. In what sense does Timasheff use "law" in his discussion of this subject?
2. What is meant by "autonomous law"? What by "customary law"? Discuss each briefly.
3. How have ideas of the end of law developed in juristic thought? What is the prevailing idea today?

4. Compare the maturity of law with the strict law as to (a) the idea of the end of law, (b) characteristics of the stage, (c) resource for attaining the end, (d) permanent contribution.
5. What did you read during the reading period?<sup>160</sup> State the substance of some part of it with such comments as you care to make.

At the least, Pound demanded a comprehensive and balanced review of his lectures. With this last examination, Pound ended his formal stint as a sociology professor. Work on the Survey of Justice in Eastern China soon occupied his full attention (Chapter 6).

### Summary

After Pound's last offering of Introduction to the Sociology of Law (renumbered Soc 68) in 1946-47, sociology of law was not offered again until 1951-52 when (as Soc 168) it was taught by Harold J. Berman, an Assistant Professor of Law, who continued the course until 1958-59 (when it was last offered). Interest was rekindled briefly in 1960 when a Sociology of Law Seminar convened during June of that year. The seminar had seven members, including Talcott Parsons and Harold Garfinkel. Neither Pound nor his work received mention in the 49-page transcript of the Seminar's deliberations<sup>161</sup> or in Parsons' (1962) subsequent essay on law and social control.

In sum, despite Pound's clear, professional efforts, his relationship to sociology at Harvard was a structural misadventure. As noted above, sociology at Harvard was, from 1901, in a state of intellectual atrophy for nearly three decades. In rising structurally to the pinnacle of American legal thought at Harvard, he "hit bottom," relatively speaking, in terms of sociology. During Pound's first two decades at Harvard, there was no viable sociological community in Cambridge with which he could interact. When, finally, in the 1930s he looked forward to Henderson's Pareto Seminar, he was thwarted by bureaucratic exigencies. Timasheff and Gurvitch did not stay long enough to build with Pound a lasting Harvard tradition of sociology of law. Three of the sociologists with whom Pound interacted at Harvard (Gurvitch, Sorokin, and Timasheff) were "continental" theorists, members of the Russian "Petrzkycki group" (Timasheff and Theodorson 1976: 333) whose philosophically-informed mistrust of positivist empiricism ran counter to the ideologically-conservative trends emergent in American sociology after World War II (Balandier 1974: 4). The Journal of Legal and Political Sociology, despite a promising roster of noted contributors, folded after Gurvitch's repatriation to France. And finally, although Pound taught actively in the Department of Sociology for a period of six years, from 1941 to 1947, he

was considerably advanced in age and not in a position to develop a large, devoted following (as he did among law students) by Harvard's sociology students per se. Sociology of law did not become an enduring focus of study at Harvard, and Pound's classroom labors on behalf of the Department of Sociology were forgotten.<sup>162</sup>

Pound was a thoroughly professional sociologist. He joined the American Sociological Society, presented papers, and published in the Society's official organs. He served on the Society's committees and was a confidant of the Society's first President and journal editor. Indeed, he enjoyed significant collegial working relationships with no less than five of the Society's presidents, specifically: Howard, Parsons, Ross, Small, and Sorokin. Pound cofounded the first American association for the interdisciplinary, scientific study of criminology, and assisted the translation of European sociological treatises into English. He worked in a wide range of progressive organizations with a variety of well-known activist sociologists (had the Society for the Study of Social Problems been organized in his day, it seems highly probable that he would have joined). Teaching jurisprudence from a sociological viewpoint in the Harvard University Law School, he also participated in the doctoral program and taught his specialty, sociology of law, in the Department of Sociology

at Harvard University. Pound was also a thoroughly professional researcher, and this aspect of his sociological work is addressed in the following two chapters.



Notes for Chapter Five

1. Pound to Ross, 10 December 1907, Box 4, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin.
2. Pound to Ross, 2 November 1906, Box 3, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin.
3. Ibid.
4. Roalfe (1977) provides an account of Wigmore's work at Northwestern. However, his assertion that Pound in 1907 "had not attended the Harvard Law School, and therefore, did not, in his training, represent the Harvard influence" (Roalfe 1977: 50) is sufficient basis on which to question Roalfe's perception of the world, at least where Pound is concerned.
5. [JBL] to Pound, 5 April 1907, John H. Wigmore Papers, Northwestern University Archives.
6. Holdom to Pound, 6 April 1907, John H. Wigmore Papers, Northwestern University Archives.
7. Appointment form, 10 July 1910, John H. Wigmore Papers, Northwestern University Archives. Pound's salary at the University of Nebraska was then \$2,500.
- 7A. Ross to Pound, 19 December 1907, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.
8. Pound to Ross, 16 November 1907, Box 4, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin.
9. Ross to Pound, 24 March 1908, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.
10. Pound to Ross, 26 March 1908, Box 4, Folder 2, E.A. Ross Papers, State Historical Society of Wisconsin. The date of Pound's first contacts with the University of Chicago is not certain, but the following quote, from Robert Scott, during discussions in early June 1909 (American Institute of Criminal Law and Criminology 1909: 113) is suggestive:

I happen to know that that was done at the University of Chicago last summer. Professor Pound conducted a course there in criminal law. He advised his students in that course to go right over into the college department and hear Professor Henderson's courses in criminology.

If correct, Pound was in Hyde Park in the summer of 1908 and was already sufficiently familiar with Henderson's courses to recommend them to his law students.

11. Wigmore to Vincent, 14 February 1919, John H. Wigmore Papers, Northwestern University Archives. Vincent was then President of the Rockefeller Foundation and Wigmore's letter was a plea for support for the Institute. Vincent, echoing the policy of the Rockefeller Foundation, sent Wigmore a striking example of the power exercised by wealthy endowments in setting the agendas of social research:

For reasons that I need not discuss in detail, it has been decided that it is not wise for the Foundation to undertake directly, or to finance indirectly, investigations in the controversial fields of economics, law and politics. All requests to subsidize propagandist undertakings in these fields have been consistently declined . . . While this Journal [of the American Institute of Criminal Law and Criminology] does not represent a propagandist movement in the ordinary sense of the term, yet if it does its work successfully it is bound to seek at various points to influence legal, administrative, and political policy. For the Foundation to make a contribution for the support of the Journal would be deemed, I am sure, inconsistent with the policy which I have outlined above. (Vincent to Wigmore, 21 January 1919, John H. Wigmore Papers, Northwestern University Archives).

E.A. Ross attributed the "policy" to Vincent, but (unless the following letter is tongue-in-cheek) he saw it as a necessary step during a period marked by public criticism of so-called "radical" (cuminating in culminating) in the Red Scare of 1919. Ross wrote to Vincent in July 1919:

Looking over the review of the Foundation's work for 1918 prompts me to send you a word to express my admiration of the skill with which you piloted the foundation out of dangerous waters and gained

it public confidence. I don't believe I have seen a slam since you took hold of it. Your entire withdrawal from the field of Industrial and Social relations in order to concentrate upon work on behalf of public health and matters related there-to, has relieved your Foundation [of] carping criticism and allayed all fears as to its [ultimate] desires. I congratulate you upon your feat of Sociological Statesmanship. (Ross to Vincent, 25 July 1919, Box 11, Folder 2, E.A. Ross Papers, State Historical Society of Wisconsin).

In subsequent years, the Institute of Criminal Law and Criminology secured funds from John D. Rockefeller and the Carnegie Foundation ([F.B. Crossley] to Mrs. W.F. Dummer, 12 December 1922, John H. Wigmore Papers, Northwestern University Archives).

12. Wigmore to Vincent, 7 January 1919, John H. Wigmore Papers, Northwestern University Archives.

13. Statement by Roscoe Pound, 9 September 1941, John H. Wigmore Papers, Northwestern University Archives.

13A. Pound to Ely, 18 March 1909, Box 38, Folder 9, Richard T. Ely Papers, State Historical Society of Wisconsin.

14. Pound to Wigmore, 22 April 1909, John H. Wigmore Papers, Northwestern University Archives. Pound confirmed to Wigmore that he was offered "a salary of \$5500 for the first year, to be increased progressively to \$7,500." Wigmore tried hard to keep Pound, and secured authorization to "offer you a total salary of \$6500, to be made \$7000 and \$7500 in 1910-11 and 1911-12" (Wigmore to Pound, 26 April 1909). The relatively greater prestige of the University of Chicago and its Law School (cf., Ellsworth 1977) was too great a pull, and Pound found himself in autumn 1909 on a well-endowed campus with some of the United States' foremost legal scholars and sociologists.

15. For list of delegates to the first meeting, see First National Conference on Criminal Law and Criminology (1909: xxiii-xxviii). Additional members are identified on typed membership lists found in the John H. Wigmore Papers, Northwestern University Archives. For background on the sociological work of Davis and Kellor, see Deegan (Forthcoming e; Forthcoming b).

16. For example, in 1910 a five-member committee was empowered "to transact all emergency business and such business as might be referred to it." All members were apparently lawyers (American Institute of Criminal Law and Criminology 1911: unpaginated).

17. Typescript, "General Committees," John H. Wigmore Papers, Northwestern University Archives.

18. Grace Abbott, "Immigration and Crime: Report of Committee 'G' of the Institute," undated pamphlet, University of Wisconsin Law Library, Madison. The questions raised concerning this topic were pursued in greater depth by Grace Abbott's sister, Edith, during the studies sponsored by the Wickersham Commission (Chapter 7).

19. In 1910, the six-person, interdisciplinary committee included John H. Wigmore (Pound's former Dean at Northwestern), Ernst Freund (a new law colleague of Pound's at the University of Chicago), Maurice Parmelee (Professor of Sociology at Kansas State University), Robert Scott (a political scientist at the University of Wisconsin), and William Smithers (a lawyer, and Chair of the Committee).

20. The potential for difficulty is evidenced in Pound's participation in a parallel project, the Modern Legal Philosophy Series, sponsored by the Association of American Law Schools. Wigmore and Pound both served on the Association's Committee on Translation. In an extraordinary exchange of at least sixteen letters between August 1915 and August 1916, Pound and Wigmore fenced with each other over progress and responsibilities for the translation and editing of Rudolf Stammler's Theory of Justice. A translation was arranged and sent to Pound who was to review it prior to publication. When Wigmore got no action from Pound, Wigmore argued that Pound was especially obligated to keep his end of the bargain, "The selection of that volume was specially emphasized by you" (Wigmore to Pound, 2 August 1915). Pound, however, declined special responsibility, disclaiming:

I do not know that I should want to say that Stammler is my favorite author. I am by no means a Neo-Kantian and undoubtedly Stammler is prolix and hard to read. My point was that in part, at least, we ought to translate works which have been of primary influence rather than books of

secondary importance from the standpoint of originality and influence. (Pound to Wigmore, 28 October 1915).

A vexed Wigmore asked at one point, "Am I not patient? I think it must be two months since I sent you the STAMMLER manuscript" (Wigmore to Pound, 18 January 1916). Pound replied, "I am struggling as well as I can with a huge mass of manuscript written with pen and ink, full of interlineations, both in pen and pencil, and erasures, and although written in a legible hand, written with a pale ink and with very fine lines which are trying to bad eyes" (Pound to Wigmore, 21 January 1916). When Pound was appointed Dean of the Harvard Law School, Wigmore sent a short note of congratulation, but tersely added, "I suppose that now your revision of the STAMMLER will be more obstructed than ever" (Wigmore to Pound, 29 February 1916). As the months progressed, Wigmore chided Pound, "the Stammler was selected for translation largely because of your high esteem for the work; you were to be the editor for it, and no one else is now in a position to undertake the burden" (Wigmore to Pound, 18 July 1916). And so it went. Stammler's Theory of Justice was published finally in 1925. Interestingly the 1925 edition includes an appendix by John C.H. Wu, one of Pound's students, titled "Stammler and his Critics," to which a substantial section (pp. 559-565) is devoted to a sociological critique (highlighting Max Weber's analysis) of the work. (All letters referenced above are in the John H. Wigmore Papers, Northwestern University Archives).

21. The other titles include Modern Theories of Criminality (de Quiros); Criminal Psychology (Gross); Crime and Its Repression (Aschaffenburg); Criminology (Garofalo), and Criminality and Economic Conditions (Bonger).

22. Ross to Pound, 22 June 1909, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

23. Ibid.

24. Ross to Pound, 19 October 1909, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

25. Ibid.

26. Ross to Pound, 13 November 1909, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

27. Ross to Pound, 21 November 1909, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.
28. Second Annual Meeting of the American Institute of Criminal Law and Criminology held at Washington, D.C., October 1, 1910. Unpublished transcript of minutes, Law Library, University of Wisconsin, Madison.
29. Bibliographic search failed to reveal the existence of any further Proceedings or, for that matter, evidence of subsequent Conferences beyond the fourth. The life of the Institute apparently centered in the Journal. If further meetings were held, they were probably appendages to other professional gatherings where a sizable number of the Institute's members were likely to congregate.
30. Howard to Pound, 1 January 1910, Box 223, Folder 13, Roscoe Pound Papers, Harvard Law School Library.
31. Pound to Howard, 4 January 1910, George E. Howard Papers, University Archives, University of Nebraska.
32. Ibid.
33. Ross to Howard, 8 January 1910, George E. Howard Papers, University Archives, University of Nebraska.
34. Ibid.
35. At least, it contains the names of no sociologists recognized by this researcher. A typescript of the 1930 membership list is found in the John H. Wigmore Papers, Northwestern University Archives.
36. Approximately forty Ross-Howard letters from this period are available in the E.A. Ross Papers, State Historical Society of Wisconsin.
37. Howard to Pound, 16 November 1910, Box 223, Folder 13, Roscoe Pound Papers, Harvard Law School Library.
38. Howard to Pound, 7 February 1914, Box 223, Folder 13, Roscoe Pound Papers, Harvard Law School Library.
39. Ibid.
40. Ross to Pound, 11 February 1919, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

41. Pound to Ross, 14 February 1919, Box 80, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

42. Pound to Ross, 13 January 1923, Box 80, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

43. When Ross wanted detailed critique, he turned to Howard in autumn 1916:

I am wondering whether I may not look to you for service which one can expect only from a friend. I am running a series of papers in the American Journal of Sociology, of which I have perhaps forty percent done -- I hope to finish it early in 1918. In case you find time to read these papers, I wish you would query or make marginal comment and criticize everything in them you doubt or disapprove. (Ross to Howard, 9 October 1916, Box 9, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin).

Howard agreed, and later supplied a careful analysis (Howard to Ross, 15 October 1916; 4 December 1916, Box 9, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin).

44. Ross to Pound, 24 December 1919, Box 12, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin.

45. Ross to Pound, 18 April 1923, Box 32, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

46. Pound to Ross, 24 April 1923, Box 32, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

47. See clippings, January 1925, Box 2, Scrapbook, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society. The Ross interview appears in The Wisconsin State Journal, Friday, January 23, 1925.

48. Pound to Callahan, 27 January 1925, Box 1, Folder 12, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society. On the heels of the Wisconsin offer, a similar proposal arrived from Ohio. Pound confided to his mother:

I don't imagine anything will come of the Ohio State University matter. I can't conceive they have anything better to offer than Wisconsin had. If the Harvard corporation

will let me, I can do some big things where I am. Moreover, Grace doesn't want to be the wife of the president of a university. Too much excitement and high pressure are things she must avoid. (Pound to his Mother, 14 September 1925, Box 1, Folder 3, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society).

49. Ross to Pound, 6 January 1938; Pound to Ross, 10 February 1938, Box 80, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

50. J.L. Gillin and Howard Becker to Pound, 23 November 1939, Box 80, Folder 19, Roscoe Pound Papers, Harvard Law School Library. Pound subscribed toward the cost of the Ross portrait (Gillin to Pound, 15 December 1939, Box 80, Folder 19, Roscoe Pound Papers, Harvard Law School Library).

51. Pound to Department of Sociology and Anthropology, 14 May 1940, Box 80, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

52. Kelley to Pound, 22 January 1918; 30 January 1918; 13 February 1918; 20 February 1918; Box 227, Folder 3, Roscoe Pound Papers, Harvard Law School Library. Kelley's letterhead shows Addams as a Vice-president, and Kingsbury and Pound as Honorary Vice-presidents. Kelley was the General Secretary of the National Consumers' League.

53. Breckinridge to Pound, 12 April 1912, Box 217, Folder 14, Roscoe Pound Papers, Harvard Law School Library.

54. Breckinridge to Pound, 11 December 1914, Box 217, Folder 14, Roscoe Pound Papers, Harvard Law School Library. The intended composition of the committee included Breckinridge (secretary), Charles Henderson, Jane Addams, John Dewey, and four others.

55. Breckinridge to Pound 2 June 1915, Box 217, Folder 14, Roscoe Pound Papers, Harvard Law School Library.

56. See letterhead, Andrews to Freund, 17 January 1913, Box 1, Folder 3, Ernst Freund Papers, Department of Special Collections, Joseph Regenstein Library, University of Chicago.



57. Pound to Abbott, 1 July 1918, Box 1, Folder 5, Ernst Freund Papers, Department of Special Collections, Joseph Regenstein Library, University of Chicago.
58. For newspaper accounts of Pound's outspoken defense of the Keating-Owen bill, see his Scrapbook, Box 2, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.
59. Pound to Mead, 1 April 1919, Box 69, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
60. Kellogg to Pound, 23 July 1941, Box 33, Folder 16, Roscoe Pound Papers, Harvard Law School Library.
61. Pound is not listed as a member in the 1906 Papers and Proceedings of the American Sociological Society. The membership roster in the volume for the 1912 meetings states that Pound became a member prior to 1910.
62. Blumer wrote to Pound as a member in 1931, but by 1939, when an updated membership list was published in American Sociological Review, Pound's name was no longer listed.
63. Pound to Ross, 23 December 1908, Box 4, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin. After Pound presented his paper, Small sent an enthusiastic note of appreciation to Pound (Small to Pound, 21 December 1908, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library).
64. Small borrowed a book from Pound in Chicago that he failed to return until 1914 (Small to Pound, 16 December 1914, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library).
65. Small to Pound, 12 June 1917, Box 228, Folder 19; Pound to Small, 24 June 1925; Small to Pound, 27 June 1925, Box 33, Folder 4; Roscoe Pound Papers, Harvard Law School Library.
66. The last known communication is a letter from Small to Pound, 27 June 1925, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.

67. Small to Pound, 21 December 1908, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library. The meeting at which Pound spoke has not yet been traced. Pound's annotations show he sent Small copies of Pound (1906, 1907, 1908a, 1908b, 1908c, 1908d).
68. Small to Pound, 16 November 1910, Box 28, Folder 19, Roscoe Pound Papers, Harvard Law School Library.
69. Small to Pound, 30 April 1912, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.
70. Small to Pound, 30 January 1914; Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.
71. Small to Pound, 6 May 1916, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.
72. Small to Pound, 17 June 1920, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
73. Small to Pound, 4 April 1921; 7 April 1921; 23 September 1921, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
74. Small to Pound, 30 October 1924, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
75. Small to Pound, 30 October 1924, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
76. Pound to Small, 12 November 1924, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
77. In 1923, Pound wrote that he was convinced by Small's argument, adding, "I wish your discussion of the Thibaut-Savigny controversy had been available a year ago" (Pound to Small, 28 May 1923, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library).
78. Small to Pound, 4 April 1921, Box 33, Folder 4, Roscoe
79. Small to Pound, 1 July 1916, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.
80. Small to Pound, 27 July 1909, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

81. Ross to Pound, 18 May 1814 [sic], Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.
82. Ross to Pound, 27 May 1914, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.
83. Beford to Pound, 9 January 1915, Box 217, Folder 3, Roscoe Pound Papers, Harvard Law School Library.
84. Pound to Bedford, 13 January 1915, Box 7, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin.
85. Dealey to Pound, 18 April 1920, Box 184, Folder 1, Roscoe Pound Papers, Harvard Law School Library.
86. Dealey to Pound, 22 October 1920, Roscoe Pound Papers, Harvard Law School Library.
87. Pound to Dealey, 29 October 1920, Roscoe Pound Papers, Harvard Law School Library.
88. Dealey to Pound, 1 November 1930, Roscoe Pound Papers, Harvard Law School Library.
89. Bedford to Pound, 29 October 1920, Roscoe Pound Papers, Harvard Law School Library.
90. Pound to Dealey, 4 November 1920, Roscoe Pound Papers, Harvard Law School Library.
91. Dealey to Pound, 5 November 1920, Roscoe Pound Papers, Harvard Law School Library.
92. Dealey to Pound, 29 December 1920, Roscoe Pound Papers, Harvard Law School Library. Pound Papers, Harvard Law School Library.
93. Ross to Pound, 13 March, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library. Albion Small was to have been a member of the ASS committee, but declined "owing to reasons of ill health in his family." E.A. Ross also appointed James P. Lichtenberger (of Pennsylvania) and U.G. Weatherly (of Indiana). In urging Weatherly to accept, Ross observed, "you know a report upon academic freedom and tenure of position depends for its weight entirely on the names attached to it" (Ross to Weatherly, 13 March 1914, Box 6, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin). When Lichtenberger resigned to investigate an

incident at the University of Pennsylvania, he was replaced by Columbia's Franklin H. Giddings (Committee on Academic Freedom and Academic Tenure 1915: 17-18).

94. Pound to Ross, 16 March 1914, Box 6, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin.

95. I am informed by Mary Jo Deegan that this is the first time that service by Jane Addams on an official ASS Committee has been documented.

96. E.W. Burgess to Pound, 16 January 1923; Miller to Pound, 17 January 1923; Pound to Miller, 20 January 1923, Box 184, Folder 1, Roscoe Pound Papers, Harvard Law School Library. The casting of Jane Addams as a "radical" is well-known (Deegan 1988). Jerome Davis was also considered "radical" in some quarters. When he arrived at Yale in October 1924, sociology Professor A.G. Keller reportedly objected to Davis belonging to the Social Science Department, an affiliation promised by Charles Brown, Dean of the Yale Divinity School:

Professor Keller had written a letter to the Dean of the Divinity School before Davis arrived in which he is held to have asserted that he had heard that Professor Davis favored recognition of the Soviet Union by the United States Government and that he could have nothing to do officially with such a radical. ("Some Aspects of the Jerome Davis Case," circa 1937, Box 20, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin).

97. "A Survey of Foreign News," undated proposals, one draft and one signed, Box 184, Folder 2, Roscoe Pound Papers, Harvard Law School Library.

98. Pound to Miller, 10 May 1923, Box 184, Folder 1, Roscoe Pound Papers, Harvard Law School Library.

99. Davis to Pound, 29 October 1923; Lane to Pound, 22 November 1923; Pound to Davis, 26 November 1923; 26 November 1923, Box 184, Folder 2, Roscoe Pound Papers, Harvard Law School Library.

100. Davis to Pound, 17 October 1924, Box 184, Folder 1, Roscoe Pound Papers, Harvard Law School Library.

101. Pound to Davis, 20 October 1924, Box 184, Folder 1, Roscoe Pound Papers, Harvard Law School Library.
102. Blumer to Pound, 21 August 1931, Box 5, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
103. Pound to Blumer, 21 August 1931, Box 5, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
104. Parmelee to Pound, 1 October 1931, Box 5, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
105. Ibid.
106. Pound to Parmelee, 1 October 1931, Box 5, Folder 4, Roscoe Pound Papers, Harvard Law School Library.
107. See, for example, Pound's draft of notes for a "Seminary in Sociological Jurisprudence" in 1913, Box 180, Folders 9-10, Roscoe Pound Papers, Harvard Law School Library.
108. Notes by Charles H. Safely, "Lectures on Jurisprudence by Roscoe Pound, Cambridge 1917-1918," typescript, bound in two volumes, Library of the University of Michigan Law School. Safely's notes on Pound's discussion of "The Sociological School" appear in Volume I: 50-92.
109. Pound to Small, 1 March 1919, Box 85, Folder 10, Roscoe Pound Papers, Harvard Law School Library.
110. Small to Pound, 7 March 1919, Box 85, Folder 10, Roscoe Pound Papers, Harvard Law School Library.
111. Pound to Small, 13 March 1919, Box 85, Folder 10, Roscoe Pound Papers, Harvard Law School Library.
112. Records of the Cambridge Scientific Club, 1909-1923, Box 9, Folder 6, Roscoe Pound Papers, Harvard Law School Library.
113. Henderson to Pound, 19 September 1933, Box 76, Folder 6, Roscoe Pound Papers, Harvard Law School Library.

An exchange of letters between Pound and Richard Ely (then at Wisconsin), reflects Ely's admiration of Pound and simultaneously underscores Pound's relative isolation at Harvard. Ely wrote:

I read the Harvard Law Review regularly and continue to follow your work with the greatest interest. It is my regret and my misfortune that I am so far away that I do not have an opportunity to meet you from time to time and to talk with you about matters in which we are mutually interested. I think of you in connection with our Legal Philosophical Society -- an awkward name -- wishing that you were a member and could engage in our discussions. I wonder if you have such a society at Harvard. Our Chief Justice belongs and attends with a good deal of regularity. Two other justices of the Supreme Court belong. The other members are from the departments of Economics, Philosophy and the Law School faculty. A society of this kind, I think, is of equal importance to the lawyer and to the economist. (Ely to Pound, 9 June 1915, Box 51, Folder 4, Richard T. Ely Papers, State Historical Society of Wisconsin).

The reply from the playful founder of the Seminarium Botanicum and regular member of the "Congenial Ten" was painfully short. Pound wrote:

I am very much interested in what you say about your legal philosophical society at Madison. We have nothing of the sort here. (Pound to Ely, 12 June 1915, Box 51, Folder 4, Richard T. Ely Papers, State Historical Society of Wisconsin).

114. End pages, Diary for 1922, Paige Box Diaries (I), Roscoe Pound Papers, Harvard Law School Library.

115. Pound to Henderson, 20 September 1933, Box 76, Folder 6, Roscoe Pound Papers, Harvard Law School Library.

116. Pound to Henderson, 20 October 1933, 25 October 1933, Box 76, Folder 6, Roscoe Pound Papers, Harvard Law School Library.

117. Gilboy to Pound, 7 December 1937, Box 86, Folder 16, Roscoe Pound Papers, Harvard Law School Library.

118. Pound to Gilboy, 15 December 1937, Box 86, Folder 16, Roscoe Pound Papers, Harvard Law School Library.

119. See, for example, Pound to Norwood, 20 February 1946, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.
120. Pound to Timasheff, 18 November 1938, Box 86, Folder 16, Roscoe Pound Papers, Harvard Law School Library.
121. Pound to Ross, 4 January 1938, Box 21, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin.
122. Ibid.
123. Pound to Gurvitch, 21 August 1940, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
124. Pound helped solicit funds from the Rockefeller Foundation to underwrite Gurvitch's appointment at the New School for Social Research. (Appleget to Pound, 17 September 1940; Pound to Gurvitch 22 October 1940, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library).
125. Pound-Gurvitch correspondence, 1937-1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
126. Gurvitch to Pound, 26 March 1941; 13 November 1941; Pound to Gurvitch 8 April 1941; 12 November 1941, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
127. Pound to Gurvitch, 10 September 1943, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
128. Pound to Gurvitch, 22 March 1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
129. Gurvitch to Pound, 4 April 1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
130. Moore to Pound, 23 September 1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
131. Pound to Gurvitch 26 July 1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
132. Harvard University Catalogue, 1944-45, p. 203. Gurvitch's interest in "social control" was apparently deep. When Edward A. Ross declined the opportunity to write the chapter on "social control" for Gurvitch's "symposium" (Ross to Gurvitch, 14 August 1943, 21 August 1943, Box 24, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin),

Gurvitch chose to write on that topic himself (Gurvitch and Moore 1945: 267-296).

133. Gurvitch to Pound, 11 November 1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

134. Gurvitch to Pound, 11 November 1944; Gurvitch to Pound, undated; Pound to Gurvitch 16 November 1944, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

135. Gurvitch to Pound, undated, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library. Letterhead reads, "Institut de Sociologie."

136. Gurvitch to Pound, undated, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library. Letterhead reads, "Centre d'Etudes Sociologiques."

137. Sorokin to Pound, 3 November 1941, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

138. Pound to Sorokin, 12 November 1941, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

139. Sorokin to Pound, 3 November 1941, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

140. Parsons to Pound, 9 March 1945, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.

141. Report on Examination for the degree of Doctor of Philosophy, 19 June 1945, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

142. Parsons to Pound, 30 April 1947; Pound to Parsons, 7 May 1947, 8 May 1947, Box 197, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

143. Parsons to Pound, 9 March 1945, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

144. Pound to Parsons, 10 March 1945, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

145. Pound to Sorokin, 1 May 1942, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

146. Pound to Parsons, 10 November 1945, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.



147. Sorokin to Pound, 6 May 1942, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.
148. Handwritten reading list, undated, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.
149. Pound to Parsons, 10 November 1945, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.
150. Class lists, 1942-43, Sociology 2, Box 83, Folder 6, Roscoe Pound Papers, Harvard Law School Library. That the Department of Sociology was located in Emerson Hall is inferred from Sorokin's letterhead which lists Emerson Hall as Sorokin's address (Cf., Sorokin to Pound, 20 January 1943, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library).
151. Class lists, 1942-43, Sociology 2, Box 83, Folder 6, Roscoe Pound Papers, Harvard Law School Library.
152. Sorokin to Pound 20 January 1943, Roscoe Pound Papers, Harvard Law School Library.
153. Pound to Sorokin 10 November 1945, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.
154. Parsons to Pound, 11 December 1945, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.
155. Parsons to Pound, 5 March 1946, Box 195, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
156. Class roster, Sociology 68, 1946, Box 196, Folder 9, Roscoe Pound Papers, Harvard Law School Library.
157. Pound, lecture notes, Box 83, Folder 5, Roscoe Pound Papers, Harvard Law School Library.
158. Pound to Norwood, 20 February 1946, Box 196, Folder 8, Roscoe Pound Papers, Harvard Law School Library.
159. Pound to [name withheld], 15 May 1943, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library.
160. In 1943, a "reading period" lasted approximately two weeks during which students were given assignments of "250 to 300 pages of average difficulty" per course to digest and be tested over (Sorokin to Pound, 12 March 1943, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library).

For the second reading period April 26 to May 8 [1942], Pound permitted his students the option of choosing to study: (1) Pound, Interpretations of Legal History, (2) Pound, The Spirit of the Common Law, or (3) Llewellyn and Hoebel, The Cheyenne Way, chapters 1-6, 8-12 (Second Reading Period, book list, Box 196, Folder 7, Roscoe Pound Papers, Harvard Law School Library).

161. Other members of the seminar included: Leon Mayhew (Teaching Fellow in Social Relations), Harvey Sacks, Stanton Wheeler (Instructor in Sociology), and Winton White (Teaching Fellow in Social Relations); Sociology of Law Seminar, 3 June 1960, transcript, Lecture Notes and Addresses, 1929-1978, Box 11, 1960-1972, Talcott Parsons Papers, Harvard University Archives, Pusey Library.

162. During a recent and enjoyable visit as a guest of the Department of Sociology at Harvard in 1988, I found that Pound was recognized among graduate students and faculty as a great legal scholar, but that his work in the Department's classrooms was unknown.

## CHAPTER SIX

### EMPIRICAL STUDIES: CLEVELAND, BOSTON, AND CHINA

The shifting of the emphasis from the will of the abstract man to concrete wants or desires of actual human beings and the recognition that jurisprudence is one of the social sciences, having to do with a highly specialized form or phase of social control, have made research a presupposition of the work of the lawmaker, judge, and jurist.

-- Roscoe Pound<sup>1</sup>

#### Introduction

Roscoe Pound was among the first jurists of his era to accept and preach the utility of empirical social scientific research for improving the efficacy of the administration of justice. To demonstrate this utility, Pound actively participated in four major empirical studies of the the "law in action" rather than remain content with abstract, disembodied discussions of the "law in books." Discussed in this chapter are Pound's efforts on the Survey of Criminal

Justice in Cleveland (1921-1922) the Harvard Crime Studies (1926), and the Survey of Justice in Eastern China (1947-1948). His work for the National Commission on Law Observance and Enforcement (1929-1931) is separately addressed in Chapter 7 as part of an experiment in parallel biography.

Near the midpoint in his sociological research career, Pound (1929b: 204) outlined the following fundamentals for empirical studies of legal systems:

The four points on which I would insist are:  
(1) one-man research will no longer suffice,  
(2) partisan, made-to-order research will but aggravate our bad legislative situation,  
(3) research must be done upon subjects as a whole, from a nationwide or even a world-wide standpoint, and (4) it cannot be done fruitfully if under pressure to do it in a hurry.

Pound approached legal phenomena systemically in the concrete reality of courts, jails, probation offices, and other manifestations of the law as a social institution. His research projects were multifaceted, bureaucratically-structured campaigns whose units of analysis stretched from cities (Cleveland and Boston) at the one end, to nations (the United States and China) at the other. He directed and coordinated the work of small armies of researchers, but never completely escaped the time pressure of workaday politicians, government officials, and foundation officers

who wanted results on demand. Pound was a workhorse, and frequently pushed himself to extraordinary limits to complete enormous projects in compressed time periods. Simultaneously, he was a scientist, and resented political meddlers. In practice, Pound's four maxims of research spoke to his ideal rather than his lived experience.

Pound relied heavily on the field reports of numerous investigators working under his direction. Only in China did Pound finally take a direct hand in the minutiae of fieldwork. Yet, Pound's syntheses bore his clear imprint; he was often one man working alone to finalize analyses of data collected by his colleagues and assistants. His personal work habits were not so far removed from the ideal of the lone scientist toiling in the laboratory. Pound opposed "partisan" research, but he eagerly sought projects that had specific political application, e.g., the reformation of the Cleveland court system, the maintenance of prohibition in the United States, and the restoration of the nationalist government in China after World War II. Pound's research had the clear purpose of shoring up the status quo. Equally clearly, he saw himself and his science as pragmatic and progressive rather than political.

Pound attempted systemic study, and linked his findings about the actual workings of law to related social institutions. In this he most fully realized his research

ideal, although he never completed a comprehensive study of both the criminal and civil elements in a legal system. He never created a situation, however, in which he was freed to conduct unhurried empirical sociological research. His studies were bureaucratic, hierarchically-organized investigations that contrasted sharply with the mutually cooperative, virtually open-ended, leisurely botanical projects of his undergraduate and graduate student days in Nebraska (Chapter 3).

Pound's direction (with Felix Frankfurter) of the Cleveland Survey of Criminal Justice in 1921 produced a landmark sociological study that became the model for all subsequent "crime surveys." Pound helped organize the Harvard crime survey in 1926. The Harvard Survey, once organized, was directed by Felix Frankfurter. It resulted in four published studies and launched Sheldon and Eleanor Glueck's well-known investigations on delinquency. Pound was a key member of the National Commission on Law Observance and Enforcement, leading much of the Commission's thinking and writing the lion's share of the Commission's findings during 1929-1931. Finally, Pound directed the Survey of Justice in Eastern China from 1947-1948. The latter brought Pound more fully into the fieldwork aspect of social research than any of his previous projects. In China, he personally inspected prisons, courts, and

interviewed officials. Taken together, these projects demonstrate Pound's research insight and extraordinary skill as a project organizer. In this chapter, primary emphasis is given to Pound's work as director of the Cleveland Survey of Criminal Justice, with short reports on his work for the Boston Crime Survey and the Survey of Justice in Eastern China.

## PART I

### THE CLEVELAND SURVEY OF CRIMINAL JUSTICE

#### Introduction

The Cleveland Survey was organized and directed during 1921 by Roscoe Pound and his junior Harvard colleague, Felix Frankfurter. Pound assembled a talented staff that used traditional and innovative sociological techniques to investigate the administration of criminal justice in Cleveland. The 729-page final report, Criminal Justice in Cleveland (Pound and Frankfurter 1922), was early identified as an exemplar of sociological research, and was the model for numerous crime surveys that followed in its wake. The project illustrates the difficulty of conducting politically sensitive research, and the frustrations of orchestrating bureaucratically-structured investigations. At the

conclusion of the project, Pound wrote a conceptually sophisticated, integrative summary that prefigured the findings of major studies in urban sociology, including Robert and Helen Lynd's Middletown and Louis Wirth's well-known essay on urbanism as a "way of life."

### Origin and History of the Survey

There is little published history on the Cleveland Survey of Criminal Justice. The existing, brief accounts by Raymond Moley (1922a, 1923, 1930: 218-26, 1980: 131-143) and Morse and Moley (1929) are best accepted with caution.<sup>2</sup> The authors of the historical essays in Van Tassel and Grabowski's (1986) edited volume on reform efforts in Cleveland did not, surprisingly, include a chapter on criminal justice.

The Survey was undertaken as a project sponsored by the Cleveland Foundation, a civic trust, as the third in a series of local surveys (the first being investigations of education and recreation). Interest in "crime" was heightened in Cleveland by the misdeeds and subsequent trial of a local judge in 1920. Thus, in early 1921, Pound was engaged to direct the Cleveland Survey of Criminal Justice. A year later, the study was complete, and the final report, initially released in installments, was published in book form in 1922.



### Initial Preparations

Pound jumped at the opportunity presented by the Survey. His enthusiasm is reflected in a note he sent to Felix Frankfurter midway through the project, "This is a pioneer survey and must be well done."<sup>3</sup> Here was a ready-made chance to demonstrate the application of empirical research methods for improving the administration of justice. As the Survey Director, Pound outlined his initial plans in early January, 1921, at his desk in Cambridge. A memo written by Pound indicates that he studied the previous Cleveland investigations, The Recreation Survey and The Education Survey. He drew a list of persons to recruit as specialist researchers, and secured the services of Felix Frankfurter to be his assistant. Pound made a preliminary sketch of the structure of the final report (to include a foreword by himself, followed by the reports of several special researchers on various topics, concluding with a summary authored by himself and Frankfurter).<sup>4</sup> Pound then traveled to Cleveland where he and Frankfurter presented the plan to the Cleveland Foundation on 29 January 1921.<sup>5</sup> The Foundation accepted the scope statement presented by Pound and Frankfurter, and the fieldwork was soon begun.



Figure 6.1. Roscoe Pound, Raymond Moley, and Felix Frankfurter in Cleveland, 1921

Source: Nebraska State Historical Society

The liaison between Pound and Frankfurter, on the one hand, and the Cleveland Foundation, on the other, was Raymond Moley,<sup>6</sup> the day-to-day Director of the Foundation (Figure 6.1). The operating agreement between Moley, Pound, and Frankfurter is provided in Appendix F. The bureaucratic arrangements were not as straightforward as Pound might have liked. Moley kept his hand in the Survey as much as he could. As the "keeper of the purse" and supervisor of the clerical support staff, Moley could keep tabs on most of Pound's operations. In essence, however, Pound was given a free hand to hire independent investigators, and was guaranteed that he and his researchers would have final approval over the content and wording of their respective final reports.

The sum of \$25,000 (excluding the Survey Directors' expenses and certain other items) was allocated to conduct the Survey and publish the reports. A relatively short time-line was adopted, "all of the reports must be complete and ready for publication by June 1st, 1921, with the exception of the summary which is to be ready for publication by June 15th, 1921." The bulk of the investigation, including organization, research design, data collection, analysis, and report writing, was scheduled for completion in a period of approximately four months.<sup>7</sup> The work took a little longer, but not much.

Pound left only a brief account of his work on the Survey, and it shows that Pound and Frankfurter adopted a grueling travel schedule between Cambridge and Cleveland:

I was asked to be director of this survey. But as serving as director would take up my whole time for a year, to the detriment of my teaching work, I accepted the appointment only on condition that Professor Frankfurter be appointed co-director. This was agreed to. Accordingly, I went to Cleveland from Monday to Wednesday of each week, and he from Thursday to Saturday of each week until the survey was complete. We felt that this work was a needed step toward effective teaching of a very important branch of the law. (Pound 1964: 138).

But Pound was prepared for hard work, and he gave the project much of his formidable attention. Following the January 29th meeting in Cleveland, Pound moved quickly to pull together a team of specialist researchers.

#### Assembling the Research Staff

Pound was vested with bureaucratic authority to select his own staff of researchers. The pattern of appointments demonstrates his administrative ability to draw together a set of proven, independent workers. Each principal investigator was assigned responsibility for specific areas of investigation and was guaranteed intellectual control over his final report. Pound did not organize the survey on a consensus or "majority rule" decision-making basis.

Rather, each contributor was made individually accountable for his own discovery, selection, and analysis of data. To co-direct the study, Pound chose Felix Frankfurter, a younger colleague at the Harvard Law School.

Frankfurter served as Co-director of the Cleveland Survey, and was well-qualified to serve as Pound's right-hand assistant. Frankfurter graduated from the Harvard Law School (LL.B. 1906) and later joined its faculty in 1914. Frankfurter's subsequent career as a Harvard law Professor and Associate Justice of the U.S. Supreme Court are ably chronicled elsewhere (e.g., Kurland 1971; Parrish 1982; Baker 1984). Frankfurter was an active proponent of social reform through law, demonstrated notably by his arguments before the Oregon Supreme Court in 1917 on behalf of the minimum wage law (Goldmark 1953: 160-179; Baker 1984: 237-240).

Frankfurter became a member of the American Sociological Society in 1915 and was closely allied with sociologist Florence Kelley. Although he contributed no articles to the American Journal of Sociology, four of his books merited sociological consideration in the review pages of AJS. Frankfurter and Goldmark's Brief for the Defendant in Error -- originally submitted in the Oregon minimum wage case -- was reviewed by Alice Hamilton (1917: 686), then at Hull-House. She called the book "an encyclopaedia of

information concerning industrial fatigue and its results." Harold Lasswell (1928: 230) said of Frankfurter and Landis' The Business of the Supreme Court, "This is an extraordinary piece of research in a field of great importance whose neglect is astounding." Frankfurter and Greene's The Labor Injunction, was reviewed by Floyd House (1930), and Frankfurter's The Case of Sacco and Vanzetti was reviewed by E.W. Puttkammer (1927).

In addition to Frankfurter, Pound assembled a remarkable set of principal investigators. The team included no women, although Pound made an unsuccessful attempt to secure the services of Julia Lathrop.<sup>8</sup> His negotiations with Lathrop are particularly instructive because their correspondence reveals much about his conception of the Survey and what he expected from his investigators.

Pound's initial plan included an assignment for Julia Lathrop, then Chief of the Children's Bureau in the U.S. Department of Labor. Pound wanted Lathrop to undertake a special study of "Defectives and Dependents" in the penal treatment system. He wrote:

One of the main heads of the survey, as I have planned it, is penal treatment, to which one of the seven volumes will be devoted. Under this head the item of Defectives and Dependents, covering both institutions and mode of judicial treatment, calls for a survey of the

administration of justice in juvenile cases and domestic relations cases with reference to institutions, relations with the police, relations with prosecutors, and relations with the courts. I am trying to get the very best investigators for each item, and for this item there is only one person in the country to be thought of. There is no one in whom the people of Cleveland would have so much confidence, or who could do this work at once so scientifically, and with so much appreciation of the practical aspects of it, as could you.<sup>9</sup>

Pound held Lathrop's scientific ability in high esteem, and he presumed she could tackle the job in short order:

I should imagine in the case of one thoroughly familiar with the general subject no great amount of time would be required to look into the local situation in Cleveland and become acquainted with the necessary facts. The survey will furnish ample and competent clerical and statistical assistance.<sup>10</sup>

Citing his own commitment to the project in spite of competing obligations, he urged Lathrop to likewise make room for the Survey, offering her "ample provision for compensation and expenses." Pound's enthusiastic hopes for the Survey were evident:

I earnestly hope you will find it possible to undertake this fragment -- but very important -- fragment of the work. Professor Frankfurter and I both have so many things to do here that we really had no right to undertake this survey. But this is a pioneer survey of judicial administration, and we felt that the opportunity to make it what it should be ought not to be

overlooked. My desire is to survey the administration of justice as a whole and in all its relations, bringing out what lawyers must be made to realize that the judicial part of the administration of justice is only one cog in a complicated mechanism, and endeavoring to show how the mechanism works as a whole, wherein the whole mechanism and each part may function badly, and what we may be able to do about it.

This is a matter of such general and social importance that I venture to call upon you for help even at a time when I know you must be looking forward to a needed and well-earned rest.<sup>11</sup>

Pound estimated Lathrop's contribution at no more than seventeen pages in the final report, and suggested a tentative due date "about the first of June."

Lathrop, citing the immediate press of work at the Children's Bureau, found it impossible to accede to Pound's request for help. She commended to Pound two works she thought would be useful: (1) a previous study of the Juvenile Court of Cleveland made by Joel Hunter in 1920 and (2) a companion study by C.V. Williams for the State Board of Charities. Finally, she recommended that Pound engage Grace Abbott<sup>12</sup> to do the work:

If you wish a further piece of work, as I judge you do, in my opinion no one could do it better than Grace Abbott, and I believe you would find that she could get leave.<sup>13</sup>



Pound grudgingly accepted Lathrop's declination. He suggested that perhaps he had not made himself clear as to the nature of the proposed Survey, and added, somewhat sharply:

I was quite aware of Mr. Hunter's study and the study made by Mr. Williams. There is a strong feeling in Cleveland, however, that a much more thorough and co-ordinated study of judicial administration in all its aspects is required.<sup>14</sup>

He concluded, "on the whole, probably it is best for me to call upon Miss Abbott, which I will do."

With the clock ticking, Pound secured Burdette Lewis, a former student of E.A. Ross at the University of Nebraska, to undertake the study of correctional and penal treatment. Pound wrote to Lewis about the work originally proposed to Lathrop:

I had thought, if it met your approval, of asking Miss Grace Abbott of Chicago to do this brief section of part of the survey, subject of course to be fitted into the whole and made use of as you might think best.<sup>15</sup>

Lewis responded promptly and favorably, "I am entirely agreeable to have Miss Grace Abbott make a study of the Juvenile Court."<sup>16</sup> There is no record that Pound contacted Abbott. In any event, she did not take part -- and the

Survey became a wholly male project in terms of the major actors, i.e., the Survey directors, the specialist researchers, and the statistical director. Women filled only lower echelon positions.<sup>17</sup>

Pound quickly assembled a group of accomplished, energetic researchers, each with specific assignments (Figure 6.2). In addition to Frankfurter, Pound obtained the services of Herman Adler,<sup>18</sup> Alfred Bettman,<sup>19</sup> Raymond Fosdick,<sup>20</sup> Albert Kales,<sup>21</sup> Burdette Lewis,<sup>22</sup> Reginald Heber Smith<sup>23</sup> and Marion K. Wisheart.<sup>24</sup> Charles E. Gehlke,<sup>25</sup> a sociologist-statistician retained prior to the Survey by the Cleveland Foundation, was not recruited by Pound but was placed at his disposal. The list of the principal contributors also included two assistant investigators who co-authored Survey reports, Herbert B. Ehrmann<sup>26</sup> and Howard F. Burns<sup>27</sup>. All told, including the directors, specialist researchers, a statistician, assistant investigators, and support personnel, the Survey's staff roster included thirty-two positions (cf., Moley 1922a: 663-664).

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**Figure 6.2**

**Principal Investigators, Cleveland Crime Survey**

<u>Name</u>	<u>Affiliation</u>	<u>Responsibility</u>
Pound	Harvard Law School Dean	Director
Frankfurter	Harvard Law School Prof	Director
Adler	Illinois Criminologist	Psychiatry/Medicine
Bettman	Cincinnati Law Firm	Prosecution
Fosdick	Formerly League of Nations	Police
Kales	Chicago Law Firm	Legal Education
Lewis	New Jersey State Official	Penal Corrections
Smith	Boston Law Firm	Court Organization
Wisehart	New York Journalist	Newspapers & Justice
Gehlke	Cleveland Foundation	Statistical Analysis

**Source:** Moley (1922a: 663-664).

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### Structural Characteristics of the Staff

The biographies of the men Pound recruited for the Survey reveal clear structural patterns of institutional loyalty, disciplinary affiliation, maturity, and records of accomplishment outside of the academy. Pound's staff was distinctive. For example, biographical data were easily located for all of Pound's recruits by resorting to the standard biographical data bases in public libraries (e.g., Who Was Who in America, The National Cyclopaedia of American Biography, etc.). By contrast, the researchers for the Cleveland Foundation's prior study of education (Ayres 1917) are more difficult to track. Using standard references, no information could be located for ten of the eighteen education investigators. (Interestingly, the data that were available revealed that Leonard Ayres, the Director of the Cleveland School Survey, was a Columbia Ph.D. and that at least seven of his investigators graduated from Columbia). The structural patterns in Pound's appointments are reviewed below.

Old School Ties: The "old school tie" worn by the researchers for the Survey typically sported Harvard colors, if not the heraldry of other schools with which Pound was previously affiliated. Pound, who had been a student at Nebraska and Harvard, and a Professor of Law at Nebraska,

Northwestern, and Harvard, chose men with degrees from and/or professorial experience at these institutions (i.e., Frankfurter, Bettman, Lewis, Adler, Burns, Ehrmann, Smith, and Kales). He chose from his students and professional colleagues. Only Wisehart and Fosdick were "outsiders" in this regard.

**Disciplinary Affiliations:** Seven were trained lawyers (i.e., Frankfurter, Fosdick, Bettman, Smith, Burns, Ehrmann, and Kales). Several had professional affiliations with sociology and/or a social science discipline (**Figure 6.3**). Adler was a physician-psychiatrist deeply interested in criminology. Lewis was a statistician and economist. Wisehart, while lacking formal ties to either law or another social science, pursued interests in the links between writing and psychology.

**Age:** The expert panel was composed of experienced men in their middle years, Smith (age 33) was the "youngster" of the group. At age 52, however, Pound was the senior member, and was a full decade older than the mean age (42 years) of his appointees (**Figure 6.4**). In addition to his position as Dean of the Harvard Law School, his age superiority likely enhanced his ability to command his investigators. On the other hand, Raymond Moley, the Director of the Cleveland

Foundation, was but 36 years of age in 1922, and this differential (in respect to Pound) may have aggravated the difficulties Moley and Pound experienced in coordinating their respective administrative responsibilities.

Ivory Tower versus Praxis: None of Pound's appointees were "ivory tower" academics. Most were trained in the nation's elite schools, and some took their turns at full-time professorial duties (e.g., Frankfurter, Adler, and Kales). Nonetheless, most engaged at some point in their careers in major projects outside the academic sphere (Figure 6.5). Training in law, a profession with numerous possibilities in applied settings, contributed to this outcome. Pound chose talented "doers" who frequently applied their talents to real world problems during their careers.

Pound selected his specialists from a network well outside the Chicago school of sociology. His recruits were structurally-advantaged. He selected talented, seasoned men. Pound knew the men professionally and concluded he could rely on them to complete the assignments he gave them. Facilitated by his position as Dean of the Harvard Law School, and given the opportunity to put together an effective research staff on short notice, Pound demonstrated superior administrative and organizational skills.

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**Figure 6.3**

**Cleveland Survey Researchers: Disciplinary Affiliations**

<u>Name</u>	<u>Lawyer</u>	<u>Social Scientific Affiliation</u>
Pound	Yes	American Sociological Society, American Institute of Criminal Law and Criminology,
Frankfurter	Yes	American Sociological Society
Adler	No	American Institute of Criminal Law and Criminology
Bettman	Yes	American Sociological Society
Fosdick	Yes	Associate editor of <u>American Journal of Criminal Law and Criminology</u> ; American Academy of Political and Social Science; National Institute of Social Sciences
Kales	Yes	Unknown
Lewis	No	American Sociological Society; American Institute of Criminal Law and Criminology; American Economic Association; American Historical Association
Smith	Yes	Unknown
Wisehart	No	Unknown

**Sources: National Cyclopaedia of American Biography; Who  
Was Who in America; Dictionary of American Biography;  
Publication of the American Sociological Society.**

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**Figure 6.4**

**Cleveland Survey Researchers: Age in 1922**

<u>Name</u>	<u>Age</u>
Pound	52
Frankfurter	40
Adler	46
Bettman	49
Fosdick	39
Kales	47
Lewis	40
Smith	33
Wisehart	42

**Sources: National Cyclopaedia of American Biography; Who  
Was Who in America; Dictionary of American Biography.**

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**Figure 6.5**

**Non-Academic Accomplishments by Survey Researchers**

<u>Name</u>	<u>Selected Non-Academic Accomplishments</u>
Frankfurter	Associate Justice, U.S. Supreme Court
Adler	Chief of staff at Boston Psychopathic Hospital; Investigations of Cook County mental health facilities; Illinois State Criminologist
Bettman	Cincinnati Planning Commission; Ohio Valley Regional Planning Commission; City Planning Committee of President Hoover's Conference on Home Building and Home Ownership; legal consultant to Tennessee Valley Authority; National Resources Planning Board
Fosdick	Principal in own law firm; President of Rockefeller Foundation
Kales	Member of law firm -- Fisher, Boyden, Kales & Bell.
Lewis	Vice-president and directing head of several J.C. Penny corporations; President of Foremost Dairy Products; President of Farm & Town Realty; Vice-president of Florida United Growers
Smith	Prepared Justice and the Poor for Carnegie Corporation; Member of Boston law firm -- Hale and Dorr.
Wisehart	Journalist and writer; Foreign correspondent; Novelist,

**Sources: National Cyclopaedia of American Biography; Who Was Who in America; Dictionary of American Biography.**

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### Methodological Innovations

The studies reported in Criminal Justice in Cleveland utilized an impressive array of sociological methodologies, from the ethnographic to the statistical. Site visits were common, as was the careful sifting and analysis of court files and other officially-collected records. The following citations present a representative sample of the many techniques employed: use of data from previous surveys (pp. 389, 393, 396, 451); mental measurement tests (pp. 66-68); survey questionnaires (pp. 113, 133, 167, 218-219); case history reviews (pp. 238-240); content analysis (qualitative, pp. 528-543; quantitative, 544-555); interviews (pp. 133-134); expert informants (pp. 134, 244); rank-order analysis (p. 309); tabular classification (p. 344, 428); systems analysis (pp. 233-250); and critical analysis (pp. 515-527). Gehelke (1922) provides a brief overview of the statistical material used in the study. Overall, the Survey was the first intensive, scientific study of a criminal justice system as a whole. Two methodological techniques employed in the Survey deserve special notice: Alfred Bettman's inventive use of case "mortality tables" to study criminal prosecutions, and M.K. Wishart's early use of content analysis to study the relation between criminal incidents and newspaper accounts of those events.

Content Analysis: M.K. Wisehart's (1922) comparative study of newspaper coverage of "crime waves" in Cleveland was one of the earliest examples of scientific content analysis.<sup>28</sup> Berelson's (1952) accounting shows that content analysis was still a novel technique in the early 1920s (Figure 6.6). Wisehart's report on "Newspapers and Criminal Justice" employed both qualitative and quantitative techniques. Qualitatively, he demonstrated that newspaper coverage of crime and court activities was overtly sensational. He demonstrated quantitatively that the inches of newspaper space devoted to reporting supposed "crime waves" was disproportionate to the number of felonies actually committed.

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Figure 6.6

Estimate of Published Content Analyses Appearing in  
Five-Year Intervals

<u>1921-</u> <u>1925</u>	<u>1926-</u> <u>1930</u>	<u>1931-</u> <u>1935</u>	<u>1936-</u> <u>1940</u>	<u>1941-</u> <u>1945</u>	<u>1946-</u> <u>1950</u>
10	15	25	40	60	130

Source: Berelson (1952: 22).

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Mortality Tables: Alfred Bettman studied the history and day-to-day practice of criminal prosecution in the Cleveland courts. He later completed qualitative investigations,<sup>29</sup> but he first posed quantitative inquiries:

Naturally the first questions for the survey are: What is the number of criminal prosecutions in Cleveland? What are the different stages through which they go? What are the different points at which they may be successful or lost or dropped or disappear? What are the different steps at which the capacity or incapacity, the honesty or corruption of the prosecutor, may play a part? What has actually been the result of the work of the offices of municipal and county prosecutors in Cleveland? (Bettman 1922: 89).

Bettman (1922: 89) replied, "The answers to these questions have been sought objectively by means of a representative body of statistics."

Bettman conceptualized each case in the criminal court as having a "life" that could end at any given stage during the process of prosecution. He sought to map what happened to felony cases once they reached the court system. Imaginatively borrowing a demographic model, his solution was the "Mortality Table":

We are calling certain of the results of these studies the "Mortality Tables," because they show the mortality of the cases at their various stages. (Bettman 1922: 91).

Using court records, Bettman traced criminal cases through the various processes in which charges were dropped or reduced to misdemeanors at various stages of prosecution. Bettman demonstrated that of every 100 persons charged with a felony, 26 cases "died" without felony convictions at the municipal court level. Of the 74 remaining cases bound over to superior court, only 37 were found guilty and sentenced. Of these, he found that eight were given suspended sentences. Of the remaining 29 who had their sentences executed, seven were required only to pay fines and another seven were imprisoned in the workhouse (often because they could not pay their fines). In summary, only 15 felony cases out of every 100 cases resulted ultimately in imprisonment in the penitentiary or reformatory.

This process, to Bettman's mind, reinforced the public view that the courts were not doing a proper job. Whereas he felt clearly that "the acquittal of an innocent man obviously cannot be treated as a failure in the administration of justice" (Bettman 1922: 89), he argued for reforms to improve the conviction rate, thus reducing the "mortality" of cases at early stages in prosecution. His carefully prepared tables allowed him to point to specific problems, including the practices of dropping cases for Nolle prosequi and "no papers" (two practices easily corrupted by undue personal and/or political influence).

Bettman repeated his pioneering use of "mortality tables" in a similar study for the National Commission on Law Observance and Enforcement in 1930.

### Bureaucratic Hurdles

The Cleveland Survey of Criminal Justice was conceived and executed as a bureaucratic enterprise. Thus, it is not surprising that Pound and Frankfurter confronted the alienating in-fighting that so often plagues bureaucratically-ordered projects. In the Cleveland Survey, the major source of friction was the meddlesome Raymond Moley, and, to a much less degree, the community review committees.

The operating agreement between Pound, Frankfurter, and Moley (Appendix F) specified a cooperative approach to the writing of the final reports. Opportunities were provided for community input through a system of committees "for criticism and suggestion." In operation, however, the committees were potentially intrusive structures.

In his short history of the Survey, Moley included an account of the review committees and their activities. According to Moley (1922a: 657):

After the completion of the reports subcommittees were formed from the membership of the advisory committee to read and discuss the reports. During the months of June and July no less than

25 meetings were held, in which these subcommittees went over each report in great detail with the authors. As a result of these conferences, each report was considerably altered by the author in light of the suggestions made by the committees.

Moley represented the process as "a cooperative enterprise," and Frankfurter (in his preface to the Survey report) publicly lauded the contributions of the Advisory Committee (Frankfurter 1922: viii). Privately, however, Pound viewed the committees far less favorably. Writing to Frankfurter in July about the need to "go at it" when editing Albert Kales' report on legal education (a politically sensitive topic in Cleveland), Pound bristled:

Let's satisfy our consciences and let Moley deal with his d---d committees. We are not going to sell our scientific birthrights for any mess of potage.<sup>29A</sup>

Invoking the mantle and prerogatives of science, Pound chafed at pressure from any quarter, including Moley and the advisory committees.

Local criticism by persons who felt ill-treated by the findings of the Survey required a time-consuming, bureaucratic response. The objectivity on which Pound insisted did not mean that Criminal Justice in Cleveland is bland reading. While the Survey is a model of

"disinterested" data gathering, it is also remarkable for its candor and the frequent "naming of names." Examples of no-holds-barred critiques, include:

- The present county prosecutor, Mr. Stanton, would probably deny lack of control over his assistants. The statutes gave him the power of selecting his assistants; but there can be little doubt that, following custom, he permitted a political organization or leader to have powerful influence in the selection. (p. 163).
- On a day during the period covered by the survey Judge Howells was sitting in Room 1 and Judge F.L. Stevens in Room 2. In neither room did the proceedings reveal the necessary dignity of a court. (p. 279).
- The fact that Judge Powell did not vindicate the dignity of the court is typical of the general attitude toward perjury. (p. 338).
- We question the adequacy of Mr. Lewis as chief probation officer as we have envisaged that office. (p. 398).
- Only the knowledge that we are dealing with a very serious subject prevents us from treating in a lighter vein some of the results of the coroner's work as performed under present conditions. Indeed, we cannot entirely suppress a sense of the ridiculous when we read over the list of causes of death as officially recorded by the coroner of Cuyahoga County for the year 1919. (p. 467).

Not all who received such criticism took it lightly.

Judge George Addams of the Juvenile Court was indirectly critiqued for having selected less than fully qualified aides. He responded by blasting the Survey in a



speech before the Cleveland City Club. Addams also complained to the Cleveland Foundation. His letter prompted the Foundation to seek a detailed, bureaucratic response to Addams' charges against Burdette Lewis (who authored the section in which Addams was criticized) and the Survey as a whole. The task of responding fell to Felix Frankfurter. In a sixteen-page, single-spaced, detailed analysis, Frankfurter systematically dissected Addams' charges. Frankfurter concluded: "I deeply begrudge the time and energy consumed in this episode. It is a sheer waste and ought speedily to be forgotten."<sup>30</sup>

Pound and Frankfurter had their hands full keeping Raymond Moley from meddling in the research for and the writing of the component parts of the Survey reports. Moley had little comprehension of Pound's methods or management style (in which each researcher was given his own lead). Herbert Ehrmann recalled that Frankfurter, during an early visit to Cleveland, had to instruct Moley in the ways of social scientific research:

The Secretary [Raymond Moley] also was disappointed that I [Ehrmann] was not seeking to expose individual crooks and scoundrels. This gave Felix [Frankfurter], the teacher, an opportunity to develop an understanding of our purposes in combing through voluminous court and police records and in interviewing scores of knowledgeable persons. We were seeking for causes of the failure of law enforcement, not acting on individual results like a local grand

jury. He [Frankfurter] put his point across so successfully that Mr. Moley later became a writer and lecturer of note on the Cleveland study and the subsequent crime surveys which it evoked. (Ehrmann 1964: 104)

Such lessons, if ever learned, apparently took somewhat longer for Moley to absorb than Ehrmann's generous account suggests.

The agreement giving Pound editorial control was broken on several occasions, contrary to the public view presented by Frankfurter (and reported by Wigdor) to the effect that:

The highly qualified survey staff worked closely with a local advisory committee and city officials, but it was not subject to restrictions or censorship. (Wigdor 1974: 243)

The problem, however, was not the committees, but Moley. Pound and Frankfurter tolerated the committees, but it was difficult to sidestep the frustrations generated directly by Moley. As the editorial work stretched into August, Frankfurter wrote to Pound to grouse about Moley:

You sometimes complain that I take things too calmly, but I think you'd find me amply aroused about Moley's behavior towards the Bettman Report -- and toward us in the final analysis. The fellow doesn't seem to have rudimentary notions of scientific work and the meaning of editorial responsibility.<sup>31</sup>

In September, serious interference by Moley came to the surface. Alfred Bettman wrote to Frankfurter about the report on criminal prosecution:

I was indeed happy to hear from you that you did not find reason for eliminating any part of the report as written by me. I was, therefore, much surprised when I arrived here last week and Moley came to see me here, to find that my report was very considerably rearranged, and with very substantial eliminations was actually in the hands of the printer.<sup>32</sup>

Disappointed, Bettman acceded to Moley because he believed that Pound had authorized the changes:

I gathered the impression from Moley whether he so intended or not, that the eliminations had been made by Mr. Pound, as the eliminated parts were treated in Pound's part of the report. So I sadly accepted the situation, feeling that Dean Pound's judgment would be better than my own.<sup>33</sup>

Frankfurter sent Bettman's letter to Pound, noting specifically that, "It does seem to me that Moley isn't playing straight." Pound responded quickly, and assured Bettman that he [Pound] wanted the report published as Bettman originally wrote it. Nonetheless, Moley used the impending pressure of publication deadlines to try to limit Bettman to cosmetic changes. Bettman reported to Pound:

I wish to express my appreciation for the solicitude you have felt and shown regarding the mangling of my report which Moley and Love performed. Frankfurter sent me the correspondence between you and him, and I have yours of September 16th. I tried by a few touches here and there on the galley proofs to restore some the emphases and contexts. That was done under great pressure, as Moley stated the proofs had to go back to the printer at once; so that now, as I have glanced through the printed report, I find I missed a few places where touches or slight rearrangements should be made in order to preserve the original meaning or emphasis.<sup>34</sup>

Pound would have none of it, and personally intervened to re-establish the editorial prerogatives guaranteed to his investigators. Pound wrote to Bettman:

If you will mark the changes which you desire to have made in the volume in its final form, I will see that they are made. I have Moley's absolute promise that any changes of the sort upon which I insist shall be made, and I shall certainly insist on anything that you desire.<sup>35</sup>

Freedom for Pound's researchers came not from *communitas* and shared intellectual play, but from bureaucratic confrontation.

Pound's work on the Survey continued throughout the summer and into the fall, interwoven with other projects. He wrote to his mother at the end of August from his summer retreat in rural Maine:

My plans now are to sail October 29, going first to Italy, then Florence, then England. I will not be through with the Cleveland Survey till Oct 5 and have to deliver a series of lectures at Yale Oct 17-22. This has been a strenuous summer -- (1) reading proof on my Dartmouth Lectures, (2) the Cleveland Survey, (3) my Yale Lectures -- these have taken every working minute. The Dartmouth lectures will be out in book form in October. The Cleveland Survey about December 1. All well.<sup>36</sup>

Pound's backwoods retreat was productive. He recounted that "I was able to do a good deal of work there," including "a good deal of what I wrote between 1920 and 1928."<sup>37</sup> During this period, Pound made several improvements on his summer house, including installation of a mile and a half line of telephone poles and a screened-in porch where he could work during the hot weather. "Indeed," he remembered, "my summary of the Survey of Criminal Justice in Cleveland was written on that porch."<sup>38</sup>

Completion of the report stalled in September, however. Pound complained to Moley that original drafts of reports were not being forwarded by Moley as originally agreed:

I was very much surprised this morning to receive the proofs of chapters 7 to 10 of Fosdick's report. I had never seen the original manuscript, nor have I had the proofs of the first six chapters. I really think you ought to send me the pamphlet of Bettman's report, and see that I get proofs of everything else. It is almost impossible for me to write the rest of my part intelligently unless I am given some reasonable chance to see the materials. You have

hurried me so, and I have had such fragmentary stuff to work with that progress has necessarily been very unsatisfactory.<sup>39</sup>

Pound finally polished off his summary by closeting "himself in a Cleveland hotel for several days of furious writing" (Wigdor 1974: 243). Although Pound and Frankfurter both had difficulties with Moley, they prevailed in the end. The final report, Criminal Justice in Cleveland, was an acknowledged exemplar of social scientific research in an applied setting.

#### Pound's Synthesis

The concluding chapter to Criminal Justice in America is Pound's analytic synthesis, "Criminal Justice and the American City -- A Summary" (Pound 1922a: 559-652). The Literary Review observed that Pound's contribution to the Survey was "the best thing of all."<sup>40</sup> David Wigdore (1974: 243) called it "a brilliant summary of the entire survey." Pound's work on the Survey served as the foundation to his more generalized and more widely read treatise on Criminal Justice in America (Pound 1930b). The organization and logic of Pound's analysis reveal his systematic and systems-oriented approach to the sociology of law and urban problems.

Pound's overall analytic strategy was hierarchically organized. His argument flows sequentially from global, abstract issues to particular issues and situations in Cleveland. Pound stated the difficulties of social control through law in the abstract, and then moved to consider legal difficulties at the world level, within the United States, in American cities generally, and finally in Cleveland. Although he proposed concrete, pragmatic actions for the city of Cleveland, Pound insisted that local problems and their solution in the modern, urban, industrialized world are rooted systemically in a much larger framework of social, legislative, legal, and historic issues.

Pound's analysis emphasized historical perspective, and demonstrated that present situations in specific localities are the outcome of long, unfolding, concantenated processes:

The criminal law of today, throughout the world, is made up more or less of successive strata of rules, institutions, traditional modes of thought, and legislative provisions representing different and inconsistent ideas of the end of criminal law, the purpose of penal treatment, and the nature of crime. This is true especially in Anglo-American criminal law. With us all stages of development and all theories and all manner of combinations of them are represented in rules and doctrines which the courts are called upon to administer. (Pound 1922a: 588).

The result of this historical process, Pound argued, "is that our criminal law is not internally consistent, much less homogeneous and well organized" (Pound 1922a: 589). For reasons rooted in the evolution of law itself, courts must rely on inherited legal institutions that are deeply -- rather than superficially -- inconsistent.

Pound counseled that reformers who ignore these historic and systemic problems waste their time working for unattainable goals. Re-organization and streamlining of the courts, efficient use of scientific data, higher ethical standards, educational reform, all these are useful and may help improve the criminal justice system, but they cannot touch the internal inconsistencies of the law, nor can they make the law -- as one institution among many -- bear total responsibility for social control.

Pound was particularly sensitive to changes in the social order over time, and to the failure of the criminal justice system to adapt to these changes. He identified the major economic and demographic shifts of his era and related them to the law. His analysis of social change in urban areas clearly presages the size-density-heterogeneity triad promulgated in the sociologically better-known work of Chicago sociologist Louis Wirth (1938).

Readers of Pound's (1922a), "Criminal Justice and the American City -- A Summary," will note that he anticipates



all of Wirth's major points -- and then some. For example, in reflecting on crime in less urbanized times, Pound noted:

Commercialized vice on a large scale, extending its operations over many localities, was unknown. Large cities with a diversified, shifting industrial population, with extreme divergencies of economic condition, with rapid and easy communications with other like centers, with a population moving back and forth daily in swarms to a business center and crowding a great volume of business into a few hours, did not afford opportunities for specialized professional crime. Such conditions have come upon us slowly in some parts of the country, but with extreme rapidity in others, as in Cleveland. (Pound 1922a: 592).

Perceptively, Pound saw that urban anonymity, a consequence of increased population size, undermined the theoretical basis of parole:

The parole system, administered in a large city in courts so organized, leads inevitably to "paroling in the dark." It is assumed, as was true enough in the old days of small calendars in rural communities that everyone knows or can know all about the offender. (Pound 1922a: 630).

In sum, Pound posed a sophisticated institutional analysis of the differences between the administration of justice in rural and urban communities:

But in a crowded urban society, in holding down the potentially sinful administrative official we give the actually sinful professional criminal his opportunity, and in insuring a latitude of free individual self-assertion beyond what they require for the upright, we give a dangerous

scope to the corrupt. The local conditions of cities demand centralization and organization of administrative agencies, coordination of responsibility with power, and reliance upon personality rather than upon checks and balances as emphatically as a pioneer, rural community demands decentralization, division of power, independent magistracies, and checks upon administration. (Pound 1922a: 593).

Pound laid down an analysis of the consequences of population size, density, and heterogeneity (and several other variables) for the everyday administration of justice under conditions of urbanism.

Pound and his researchers discerned serious institutional misalignments in the modern city. Industrial society proliferated legal statutes, with the result that there were now simply more rules to break. This situation contributed structurally to the apparent "breakdown" in law observance when large numbers of immigrants, who could not read or did not otherwise understand the new multitude of statutes, inadvertently broke the law. As a result, the criminal justice system was artificially overloaded with cases. If immigrants could be taught English, the courts would benefit directly. Thus, failure of the education system to "keep up" was seen by Pound to impact directly on the legal system.

Pound agreed that rapid technological change, such as the introduction of the automobile, introduced new sets of legal regulations that must be enforced, further increasing the load on the courts. The automobile introduced new opportunities for crime (both theft of the vehicles per se, and the use of automobiles to commit crimes).

All in all, due to technological and social change, many persons accused of law violations in 1920 were charged with newly-defined crimes that did not exist even a few years earlier. Given the proliferation of inconsistent and sometimes contradictory laws, Pound concluded that existing legislative processes were inadequate for urban society (Pound 1922a: 605). He noted also that the institution of the family required special consideration in the reorganization of urban court systems to help secure domestic relations against the strains of modern life (Pound 1922a: 609-610). Pound's historical perspective led him to conclude, finally, that the legal profession itself had evolved such that the most highly trained legal expertise belonged to business and industrial interests, leaving the least qualified attorneys and officials to work within the criminal justice system (Pound 1922a: 609). Having itemized the historical evolution of the present situation and its particular problems, Pound urged what he considered constructive adjustments to the judicial system to better

coordinate it with the social exigencies of modern urban life.

### Critical Response to the Survey

Critical response to Criminal Justice in Cleveland was generally positive. The report was well received in popular journals. Reception of Criminal Justice in Cleveland by sociologists was also positive, particularly among applied sociologists. The Cleveland study received a major endorsement from Chicago sociologists, Robert Park and Ernest Burgess, and was prominently featured in the Survey. The book is only rarely cited by modern sociologists, however. The hegemonic practices of the male Chicago school of sociology may have hastened the sociological oblivion into which Criminal Justice in Cleveland finally fell. Significantly, Criminal Justice in Cleveland was required reading in courses at the University of Chicago, in the School of Social Services Administration rather than in the Department of Sociology. Thus, while the Cleveland study was apparently a recognized reference among female sociologists at Chicago, it was not widely adopted as a model by male Chicago sociologists nor widely cited by them (despite the early endorsement by Park and Burgess).

### Local Press Reaction

Wisehart (1922) wrote a report in Criminal Justice in Cleveland on the relationship between crime, criminal prosecution, and newspapers. His conclusion that the press sensationalized crime-related stories in order to sell more papers, does much to explain the reception given by some of the Cleveland papers to the installment release of Criminal Justice in Cleveland. The papers apparently sensationalized the Survey findings, to the dismay of the investigators. Wisehart (1922: 515) wrote that "Cleveland, like other large American cities, is a newspaper reading community." There were three daily papers, the Plain Dealer, the Press, and the News. According to Wisehart, they were competitive to a fault.

The newspaper industry, argued Wisehart (1922: 515-516), was a significant variable affecting the criminal justice system:

After the survey was under way the investigators charged with the different divisions of the inquiry found themselves, independently, encountering the press as an immediate and persisting factor in their respective problems. The separate investigations of the police, the prosecution, and the criminal courts quickly touched the press as one of the great sensory nerves in the organism of criminal justice. (Wisehart 1922: 515-516).

The press diverted attention from some aspects of law enforcement while exaggerating the significance and relevance of others. The active role of the press in reporting and interpreting the results of the Cleveland Survey were sharply felt by Pound's investigators.

Alfred Bettman complained bitterly that the Cleveland press refused to focus on systemic problems. Bettman wrote to Pound in angry despair after the public release of Bettman's report on criminal prosecution:

In the report, in my conversations with reporters and others and in my public address I stressed, time and again, that one of the things to get away from is the analysis and interpretation of the situation in terms of the particular individuals who happen to be prosecuting attorneys at the moment. The press, however, characteristically pictured me as attacking Stanton, Bell, etc.<sup>41</sup>

As to whether the press could be counted upon to support the reform goals of the Survey, Bettman concluded: "The Cleveland newspapers are in such a hot competition for sensation that help from them can hardly be hoped for."<sup>42</sup>

Raymond Moley (1980: 140), by contrast, gave the press "credit for developing the public opinion which made the survey possible." Moley thought that press attention to crime could be turned to a public relations advantage for the Survey. Moley (1980: 132) later wrote, "I realized that

crime and the law were subjects which were sure means of attracting public attention. The newspapers had learned that long ago." Thus, Moley (1980: 134) recalled:

I felt sure of strong newspaper support, for the editors and, more important, staff members were friends of mine and I had hinted to them that the Foundation might undertake the survey if we could be assured of strong public support.

To gain newspaper support, it is likely that Moley "hinted" at a different type of investigation than unfolded under Pound's objective and high-minded leadership. Moley was, for example, disappointed when Pound's researchers did not seek "to expose individual crooks and scoundrels" (Ehrmann 1964: 104). If Moley promised muckraking disclosures to his journalist friends, then press failure to focus on systemic issues, as Bettman complained, was due in part to Moley's theory and practice of "public relations." Moley's "hints" may have catered to the journalistic thirst for sensational stories in Cleveland. It should be noted too that the director of the pre-Moley education survey in Cleveland had no difficulty gaining responsible newspaper coverage and discussion of education issues on a weekly basis for nearly a year (Ayres 1917: 37).

When released to the public, the first installments of the Survey report generated the greatest newspaper coverage,

at least in the Plain Dealer. For example, when Smith and Ehrmann's report on "The Criminal Courts" was presented, the Plain Dealer devoted several columns to what Smith and Ehrmann wrote about Judge McGannon's murder trial (it was McGannon's killing of a bootlegger on a Cleveland street, and the subsequent trial, that resulted in popular outcry for judicial reform in the city (Survey 1921: 697-698)). Smith and Ehrmann's (1922) report is 143 pages in length, and only three pages (337-339) are devoted to the McGannon trial. As subsequent installments of the Survey were released, the Plain Dealer devoted less and less space to each report. By the time Pound's final summary was published and presented by Pound in a speech to the Cleveland Bar Association, the Plain Dealer devoted comparatively little space to the event or to Pound's masterful synthesis and buried the story in the back pages of the newspaper. The novelty of the Survey apparently wore off. Suffice it to say that Cleveland newspapers fastened upon Criminal Justice in Cleveland in a manner designed to sell newspapers in a competitive local market. That the news value of the individual installments was primarily local is attested by the lack of any significant notice of the progress of the Survey in the New York Times (cf., Index to the New York Times 1920-1922).



The Survey may have helped sell a few newspapers, but it did not generate a grass roots or populist response. Rather, the recommendations of the Survey were "taken under consideration for further action" by relevant civic groups, such as the Cleveland Bar Association. To coordinate action, the Cleveland Foundation sponsored the Cleveland Association for Criminal Justice, with representatives from thirteen civic associations (Moley 1922a: 660-661). The extent to which the recommendations of the Cleveland Survey were effectively realized by the Association for Criminal Justice is an interesting question (e.g., Moley 1923), but one that lies beyond the immediate scope of the present study.

### Popular Response

Publication of Criminal Justice in Cleveland was greeted with approval in popular journals. Booklist observed that "in many ways this is a remarkable book" and the Literary Review noted that the work would be of special use to students of American institutions but added, "it will be of scarcely less value to readers who are concerned about the enactment and administration of law in any part of the world."<sup>43</sup> The most thorough review appeared in The Independent, where Maryland U.S. District Judge, John Rose (1922: -313), concluded, "it behooves many another community

to study its criminal procedure in action with the thoroughness with which Cleveland has taken the trouble to investigate its." Other favorable reviews appeared in the Boston Transcript and the London Times Literary Supplement.<sup>44</sup>

With reference to the study of crime and criminal justice per se, the Survey and the resulting establishment of the Cleveland Association for Criminal Justice served as models for local action in other cities and states. McClain (1983: 510) notes:

The example of the Cleveland crime survey stimulated the establishment in other jurisdictions of crime commissions charged with similar responsibilities.

These commissions and the studies they conducted, in Georgia, Minnesota, Missouri, Memphis, Illinois, and New York, lacked Pound's guiding hand. McClain (1983: 510) judged that the later studies "were in general pale imitations of the original."

### Sociological Response

In the second edition of their famous text, Introduction to the Science of Sociology, Robert Park and Ernest Burgess (1924: 57-60) compiled a list of "Representative Works in Systematic Sociology and Methods of

Sociological Research." They identified Criminal Justice in Cleveland (in company with Charles Booths' Life and Labour of the People in London, Paul Kellogg's The Pittsburgh Survey, and three other studies) as one of six methodological examples of sociological investigation in communities. Thus, Park and Burgess accepted Pound's work as a substantive methodological exemplar in urban sociology.

Given their initial recognition, however, Park and Burgess did not further promote Pound's "non-Chicago" sociological work. Chicago sociology promoted its own, especially in the field of urban ecology. In 1938, for example, Louis Wirth published his well-known and frequently cited essay on "Urbanism as a Way of Life" in the American Journal of Sociology, but Wirth made no reference to the earlier, similar arguments advanced by Pound in Criminal Justice in Cleveland. Pound's analysis, of which Park and Burgess were clearly (and even favorably) aware in 1924, was conveniently overlooked by later students of urban society at Chicago.

Appreciation for the direct application of sociological methods on practical issues of judicial administration gained ground in American law schools as a result of Pound's "worked example" in Cleveland. Reviews of Criminal Justice in Cleveland appeared in several law journals, including: California Law Review (Kidd 1922) Harvard Law Review (Stone

1922), American Bar Association Journal (1922), American Law Review (1922), and the Michigan Law Review (Ballantine 1922). Criminologists also took note, and a review appeared in the Journal of the American Institute of Criminal Law and Criminology (Reynolds 1921-22). The American Bar Association Journal (1921) reprinted substantial excerpts from the Cleveland Survey. To date, this researcher has found only limited citation of the Cleveland Survey within specifically sociological works. The major exception (Lynd and Lynd 1929) places Pound's ideas in stellar company, however.

Robert and Helen Lynd, two graduates of the sociology program at Columbia University, found Pound's work instructive. They reached the conclusion in their famous Middletown study that:

Changes in the life of the city have put increased strains upon institutional devices originally framed to operate in a simpler culture. (Lynd and Lynd 1929: 427).

For justification of their thesis, they quoted Pound's prior conclusion in Criminal Justice in Cleveland that:

The pivotal point is that institutions originally devised for rural or small-town conditions are failing to function effectively under metropolitan conditions.

When the Cleveland Survey was cited for its theoretical insight, the recognition came from outside of the male Chicago school of sociology (for discussion of the gendered division of sociology at Chicago, see Deegan 1988c).

Criminal Justice in Cleveland was recognized, well into the 1940s, by the female sociologists at the University of Chicago. The Survey report was assigned reading (Figure 6.7) for students in courses at the University of Chicago offered in the School of Social Services Administration (where Edith Abbott and Sophonisba Breckinridge were faculty members).<sup>45</sup> In 1920, the Chicago female sociologists (who linked sociology to social praxis as well as theory) were administratively expunged from the male Department of Sociology (Deegan 1988c). The female sociologists who appreciated the pragmatic focus of Pound's sociological research assigned it in their courses in the School of Social Services Administration.

The applied focus of Pound's research found warm welcome in Paul Kellogg's Survey, a journal to which many sociologists regularly contributed. In the Survey, however, neither the methods nor the findings of the Cleveland Survey were subjected to analysis or critique. Rather, the pages of the Survey were made available to John Love (1921) and Roscoe Pound (1921a) to report the results of the Cleveland

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**Figure 6.7:**

Assignment of Criminal Justice in Cleveland in University  
of Chicago courses 1932-1941, demonstrated by Reserve  
Reading Room charges.

<u>Year</u>	<u>Charged to</u>	<u>Charge date</u>	<u>Quarter</u>
1932	SSA 202	1-23-32	winter
1933	RR Reserve	9-13-33	fall
1934	RR Reserve	9- 6-34	fall
1937	SSA 202	2-16-37	winter
1938	351 SSARR	2- 3-38	winter
1939	351 SSARR	2- 4-39	winter
1941	351 SSARR	2-11-41	winter

**Note:** SSA refers to Social Services Administration; RR to an unspecified reading room; and SSARR to Social Services Administration Reading Room. SSA 202 was a research methods course.

**Source:** Library charge records, Regenstein Library, University of Chicago, Cleveland Crime Survey, copies 1-3.

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study. Kellogg thought highly of Pound's work and sought to give it wider sociological exposure through the pages of the Survey. Finally, it should be noted that the Survey report is still available. Criminal Justice in Cleveland was reissued in a reprint edition in 1968 by Patterson Smith in their Criminology, Law Enforcement and Social Problems series.

## PART II

### A SURVEY OF CRIME AND JUSTICE IN BOSTON

#### Introduction

Pound initiated an investigation of criminal justice in Boston under the auspices of the Harvard Law School in 1926 (Wigdor 1974: 246). Although Pound helped start the project and kept tabs on its progress, he worked "behind the scenes." Felix Frankfurter was appointed Director and managed the day-to-day operation of the project. The Harvard project produced four studies published individually between 1934 and 1936 as the Survey of Crime and Criminal Justice in Boston (Harvard Law School 1934-1936) for which Felix Frankfurter wrote brief introductions. The series included the well-known study by criminologist Sheldon Glueck (1934), One Thousand Juvenile Delinquents. A planned, introductory synthesis volume for the Boston survey as a whole was contemplated by Frankfurter but never produced.

#### Funds for the Boston Survey.

Unlike the Cleveland Survey (which received total financial support from the Cleveland Foundation), the Boston project was funded from a patchwork of sources and subsequently required additional fund-raising activity by

the project's Director. Funding for the Boston survey was initially obtained internally from the Milton Fund (a Harvard endowment) and then matched externally, with Pound's encouragement, by the Laura Spelman Rockefeller Memorial fund.<sup>46</sup> Additional funds (\$15,000) from unnamed "friends of the school" were contributed "for a special study of the workings of the juvenile court and the treatment of the juvenile offender."<sup>47</sup>

In 1927, the fund-raising task passed from Pound to Frankfurter who renewed the requests for funds from the Milton Fund and the Spelman Memorial. Reflecting Dean Pound's support of the project, Frankfurter noted that the Law School absorbed much of the cost, "which includes the very heavy drain on the time of the Director" (i.e., Frankfurter). Frankfurter lamented that Walter Lippman and Alfred Bettman "are not at all being paid on a commercial basis."<sup>48</sup> The earlier Cleveland Survey was bureaucratically-structured such that financial matters were handled by a separate administrative officer (Raymond Moley) in the Cleveland Foundation.<sup>49</sup> As Co-directors of the Cleveland Survey, neither Pound nor Frankfurter were responsible for generating funding. For Frankfurter, raising money was a time-consuming, bureaucratic irritant.



Research Agenda for the Boston Study.

In 1926, Pound gave his attention to the Boston survey. An early draft (in Pound's handwriting) of the research agenda for the Survey of Crime and Criminal Justice in Boston outlined the major themes to be explored: (1) Crime in Greater Boston, (a) "Statistics of crimes -- especially crimes of violence," (b) "Attempt through court records to get some comparison of proportion of certain specific crimes to population for successive decades;" (2) Conditions of Criminality in Greater Boston, (a) "Who are the persons who commit certain specified crimes?" (b) "Economic and social conditions of criminality," (c) "Conditions of juvenile delinquency," and (d) "The policing of Greater Boston with respect to criminality;" and (3) Criminal Justice in Greater Boston, (a) "Police," (b) "Prosecution," (c) "Judicial organization and the functioning of the courts -- particularly the administrative agencies of the courts," (d) "The substantive criminal law and legislation," (e) "Criminal procedure," (f) "The practitioners in criminal causes," (g), "Medical relations," (h) "Penal treatment," and (i) "The press."<sup>50</sup>

Researchers for several topics were tentatively identified, including Raymond Fosdick on "police," Alfred Bettman to look after "prosecution," and Sam Bass Warner to conduct the statistical studies. One of the Gluecks

(presumably Sheldon) was proposed to assist Bernard Flexner on "penal treatment." Annotations on Pound's outline show that Pound and Frankfurter shared the task of contacting and recruiting investigators.<sup>51</sup>

Pound and the Gluecks.

Pound, as Dean of the Harvard Law School, supported criminological investigations generally at the Law School during the 1920s, and he looked with particular favor on the work of Sheldon and Eleanor Glueck. Sheldon Glueck participated directly in the Boston survey, but Pound's interest in the Gluecks went far beyond that particular project. Pound secured fellowships for the Gluecks, whom he judged to be promising graduate students (Wigdor 1974: 246). He encouraged their investigations, and wrote the forward to the Glueck's (1934) 500 Delinquent Women.<sup>52</sup> Major criminological studies by Sheldon and Eleanor Glueck evolved under Pound's sponsorship during this period.

Sheldon Glueck, to the extent that he is considered a sociologist, was one of the few sociologists who studied under Pound. He attended Pound's "famous seminar on jurisprudence" in 1921 (Glueck 1964: 308), and recalled:

When certain professors advised, discouragingly, that it was not a very good idea for me to try to write a doctoral dissertation combining law and psychiatry, it was Dean Pound who warmly

encouraged me to go ahead. The result was Mental Disorder and the Criminal Law, the publication of which led to my appointment at the Harvard Law School. (Glueck 1964: 306)

Glueck (1964: 306) later suspected that Pound engineered Glueck's appointment to the first Roscoe Pound Professorship at Harvard in 1950.

In addition to the Boston survey per se, Pound "was instrumental in setting up at the Harvard Law School an Institute of Criminal Law" (Glueck 1964: 309). This structural umbrella "led to a series of fundamental pioneering researches into the causes, treatment, and prediction of juvenile delinquency" (Glueck 1964: 309). The Institute sponsored Sheldon and Eleanor Glueck's long line of criminological investigations (Glueck 1964: 309), including: 500 Criminal Careers (1930); Five Hundred Delinquent Women (1934); 1,000 Juvenile Delinquents (1934); Later Criminal Careers (1937); Juvenile Delinquents Grown Up (1940); Criminal Careers in Retrospect (1943); After-Conduct of Discharged Offenders (1945); Unraveling Juvenile Delinquency (1950), Delinquents in the Making (1952); Physique and Delinquency (1956); and Family Environment and Delinquency (1962).

Pound and Miriam Van Waters.

Pound actively pursued researchers for the Boston project and he played a waiting game to obtain the services of anthropologist-jurist-social worker Miriam Van Waters.<sup>53</sup> Although Mennel (1980: 710) asserts that Felix Frankfurter invited Van Waters to join the Harvard Law School Crime Survey in 1927, the archival record shows clearly that Van Waters was secured by Pound. In 1926, Pound contacted Ethel Sturgis Dummer to arrange for Van Waters' services.<sup>54</sup> Dummer was a Chicago philanthropist and personal sponsor of both Van Waters and sociologist William I. Thomas in the 1920s (Deegan Forthcoming h). In July, Pound pressed Dummer for a progress report. Dummer replied:

Please do not think I did not take up the matter of survey with Miriam Van Waters. She took it under consideration, but as yet has not written whether it would be possible for her to undertake it. This delay gives me hope that she is working toward that end. As I set before her my idea of the possibilities of the results of such thorough survey as you had in mind, I could see her attitude changing and that the plan proved rather tempting.<sup>55</sup>

Pound persisted. In January 1927, he wrote to Dummer:

Many thanks for your telegram. I have talked with Dr. Van Waters this morning and find her quite as eager to do the work for us as I am to have her do it. I am in hopes that the slight obstacle which seems to stand in the way will be obviated.<sup>56</sup>

Van Waters came to Harvard where she began a survey of facilities for juvenile delinquents in Boston. The outline of Van Waters' proposed study was ambitious and detailed,<sup>57</sup> and Pound held her work for the Boston survey in high esteem.<sup>58</sup>

### Frankfurter's Direction of the Survey

An impressive roster of investigators was drawn up and engaged for the Boston survey. These investigators and consultants included: Herman Adler, Albert Bettman, Raymond Fosdick, Charles Gehlke, Sheldon Glueck, Walter Lippman, Sam Bass Warner, and Miriam Van Waters.<sup>59</sup> Members of the Law School, including Pound and Frankfurter, also contributed to the project. Frankfurter was named Director of the survey and to him fell the day-to-day management of the project.<sup>60</sup>

Frankfurter envisioned a methodical study freed from the pressure of arbitrary deadlines and the sensationalist newspaper coverage that plagued the Cleveland Survey. He devoted considerable thought to the philosophy and conduct of the project. His keen interest in survey methods was evidenced in his questions at the Social Science Research Council's (1926, II: 311-320) Hanover Conference. In March 1927, Frankfurter drafted a "Progress Report for Members of Crime Survey" in which he emphasized the need for intellectual caution:

Bertrand Russell has somewhere cautioned against the danger of premature generalization in the natural sciences. The caveat is infinitely more needed in the social sciences. Here we have still to evolve scientific methods and procedure -- the means for gaining knowledge -- let alone those truths which we call scientific laws. In dealing with the, as yet, unexplored problems involved in crime, the chief task is to define more exactly the problems that call for exploration, and to devise the instruments and processes which give solid promise of furnishing light towards solutions. The caution against generalization has seemed to me also applicable to the procedure of our survey.<sup>61</sup>

The admonition forbidding premature generalization took serious root! Frankfurter anticipated completion of the special studies in 1928, but Van Waters did not complete her research until 1930, and the published volumes by the other investigators did not appear until 1934-1936.

Frankfurter planned an introductory volume, "skillfully cross-referenced to the sectional reports without being overloaded with foot-notes or the obvious paraphernalia of scholarship," to introduce the special studies of the survey. "The general report will express the collective judgment of the group, synthesizing the findings and indications of the specialized studies." "The report will naturally begin with a rather detailed exposition of crime in Boston." This introductory volume, planned at one hundred pages, "will form a self-contained volume whose authorship will be the group as a group."

Frankfurter's conceptual approach to the introductory volume lacked Pound's gift for logical classification and precise organization. Frankfurter expected the parts and conclusions of the introductory volume to flow "naturally" from one topic to another. Frankfurter asserted confidently, "the diagnosis of the difficulties of the present system will then write itself."<sup>62</sup> It did not.

By 1930, Frankfurter became disillusioned with "crime surveys" as an approach to criminological investigation. Speaking extempore to the National Conference of Social Work (Frankfurter 1931: 64), he observed, "surveys undoubtedly have driven home the indispensable need for criminal statistics," but as a means to understand the causes of crime:

It is doubtful whether the survey method, requiring fairly rapid results and the brigading of a large group of specialists, will ever give us a really scientific contribution to the subject. (Frankfurter 1931: 66).

"Real scientific inquiry," he continued, "requires two things above all others." First, "quick results must be eschewed," and second, "a scientific atmosphere free from contention" is required (Frankfurter 1931: 68).

Frankfurter encouraged the assembled researchers to "try to find our own minds" and engage in "thorough

cross-examination" of findings and scientific orthodoxy. At this "pep talk" in March 1927, Frankfurter observed that the individual studies were underway and that while progress was evident, conclusions in each special study "are not likely to take shape for another year."<sup>63</sup> His estimate was much too optimistic. Not waiting for the special studies to be completed, Frankfurter eagerly forged ahead. Although his rhetoric reflected a consensus model of decision-making, he mapped the structure and argument of the introductory volume long before the specialists' data collection and analyses were complete. The introductory report, to be authored by "the group as a group," never materialized.<sup>64</sup>

By the end of the 1920s, working relations between Pound and Frankfurter became strained (Parish 1982: 159; Wigdor 1972: 250-251; see also Chapter 9, this study). In 1929, Pound immersed himself in the work of the Wickersham Commission, and total responsibility for the Boston survey fell to Frankfurter. In addition, Pound and Ada Comstock (President of Radcliffe College) raided the staff of the Boston survey, stealing away Miriam Van Waters and Sam Bass Warner for assignments on the Wickersham investigations.<sup>65</sup> In January 1939, Frankfurter was nominated and confirmed to the U.S. Supreme Court, leaving the Boston survey far behind. Pound, who resigned his deanship in 1936 at age sixty-five, did not clean up the unfinished business of the



Boston survey even though he remained on the faculty as Harvard's first University Professor. The introductory volume for the survey never "wrote itself."

Despite Pound's substantial support and Frankfurter's energetic visions at the start of the Boston survey, the project never produced a comprehensive synthesis although it enjoyed advantages that other researchers only dream about. The Survey of Crime and Criminal Justice in Boston was a structurally-advantaged project. It began at Pound's initiation and benefited from his counsel. The survey attracted enviable financial support (including Rockefeller money), hired a staff of outstanding specialists, enjoyed access to Harvard University Press to publish its results, and was directed by Felix Frankfurter, a Harvard Law Professor and veteran of the Cleveland Survey. Nonetheless, the Boston project lacked closure, no integrated statement resulted from years of work. Frankfurter's vision of communal intellectual work was rhetoric rather than reality. With Frankfurter at the operational helm, the project lacked Pound's organizational drive and synthesizing insight.

#### Legacy of the Boston Survey.

The Boston survey was not without accomplishment, however. Four volumes of the Boston survey were published under Frankfurter's guidance in 1934-1936 by the Harvard

University Press. Too long in preparation, and lacking synthesis, the Boston survey reports did not compare favorably with the pioneering role filled by Criminal Justice in Cleveland. Importantly, the Boston survey gave Pound an opportunity to observe at close range the work of Miriam Van Waters and Sam Bass Warner, and both were brought to the National Commission on Law Observance and Enforcement to undertake major investigations. The Boston survey also cemented the foundation of Pound's growing appreciation of Sheldon and Eleanor Glueck's work in empirical criminology. The testimonial to Pound's initiation and support of the Boston survey is not the survey per se, left incomplete under Frankfurter's directorship, but the long, productive line of studies produced by the Gluecks of Harvard.

### PART III

#### CHINA: POUND'S LAST SURVEY

##### Survey of Justice in Eastern China

During the period 1946-1948, Roscoe Pound organized and conducted a survey of criminal justice in eastern China under the auspices of the nationalist Chinese Ministry of Justice in Nanking. Pound's work on behalf of Chinese law was an invited "reconstruction" effort intended to assist

China at the end of World War II (following the expulsion of the Japanese who occupied China from 1937 to 1945). The survey, which Pound assessed as "the biggest job I ever undertook,"<sup>66</sup> utilized his seasoned skill as a survey director and his virtually boundless energy as a peripatetic fieldworker.

China held fascinations for many Americans. Pound's sociological mentor, Edward A. Ross, traveled through China in 1910 and sent Pound a note on legal conditions in there.<sup>67</sup> In 1935, Pound made his first trip to China. It was an enjoyable visit:

We have had great times in Tokyo, Shanghai, Canton, and here [Hong Kong]. I seem to have old students everywhere and they have turned the Orient inside out for us.<sup>68</sup>

As professor and Dean of Harvard Law School, Pound's students included structurally-advantaged young men from around the globe, including China. These contacts served him well during the preparation and conduct of the 1947-1948 survey.

Pound's last empirical field study was conducted within the organizational framework of a government bureaucracy, the Chinese Ministry of Justice. Dr. Chao-lung Yang, an emissary from the Minister of Justice (Dr. Kwan-sheng Hsieh), solicited Pound's reaction to a proposal that Pound

become an official advisor to the Ministry of Justice. In late 1945, Pound indicated his willingness to serve, and gave assurance that his age (then seventy-five) would not "prevent my giving efficient service."<sup>69</sup>

Pound was appointed in February 1946. He took a preliminary trip to China in the summer of 1946, and "promised to go back to China in June of 1947 and stay as long as I may be needed."<sup>70</sup> During his 1946 visit, Pound proposed establishment of a national center for study of the institutional framework of the Chinese legal codes. This, he thought, "would be a decisive step toward the unification of Chinese law."<sup>71</sup> In transmitting his idea to the Minister of Justice, he noted it might "not be practicable at the time" but could be held in reserve for future use.<sup>72</sup> Subsequently, Pound took on the project single-handed and wrote two volumes of a projected five volume study.<sup>73</sup> "In the mean time," he wrote, "I should like further direction as to what I can do to be of use to you."<sup>74</sup>

Pound's further "use" included conducting a major survey of the Chinese judicial system. Pound left the United States for an extended stay in China starting in September 1947. His sister, Louise, who had her own sources of intelligence on China,<sup>75</sup> raised concerns for his safety, to which he replied through his sister, Olivia:

Tell Louise there is no need of worrying about what I am doing in going to China . . . . The truth is our American newspapers grossly misrepresent the situation in China. We were as comfortable in Nanking last summer as we could have been anywhere in this country at the same time . . . . Such civil war as there is is confined to a remote part of the country and Nanking is as peaceful and as safe as Boston. Indeed we have more homicide, robbery, and larceny here in a day than we read about in Nanking all last summer.<sup>76</sup>

Laying aside his incorrect estimation of Mao Zedong's formidable forces, travel to China after the war was not without problems. Communications were often slow<sup>77</sup> and travel sometimes exciting. Pound reported to his sister, Olivia:

Between Tokyo and Shanghai an engine went dead and there were alarms and excursions. We were warned we might have to come down in the water and to put on our Mae West jackets, etc. But in two hours we managed to limp in, no one hurt and no damage to me.<sup>78</sup>

Within a week of his arrival, he "put in a report, with carefully worked out plans for the year."<sup>79</sup> His plans included, as a first step, a field survey of the actual condition of justice in China.

### Logic of the Survey

Organizational details of the Survey of Justice in Eastern China are found in five unpublished reports,<sup>80</sup> the last of which is reproduced in Appendix G. The Survey was more broadly conceived than Pound's prior investigations in that both criminal and civil aspects of justice were to be examined. Pound gave priority to criminal justice, however, and recommended that this part of the proposed survey "be done at once."<sup>81</sup> As events developed, the Chiang Kai-shek government was overthrown and the survey of civil justice was never begun.

Pound conceptualized the survey of criminal justice in three parts, each further subdivided. Characteristically, he proposed starting with an historical review of the Chinese criminal justice system, to be followed by an exposition of modern data. First, Pound wanted newly collected data on "Agencies of Public Order," including (a) police, and (b) criminal investigation and detection. Second, Pound turned to "Agencies of Prosecution," including causes brought by (a) public, and (b) private action. Here, Pound sought precise data on prosecution procedures, sentencing and pardons, and the efficiency of the various courts. Third, Pound explored the "Agencies of Penal and Correctional Treatment," including jails, prisons, and facilities for juveniles and the insane. He was especially

interested in rates of recidivism and provisions for releasing inmates from correctional facilities.<sup>82</sup>

### Staffing the Survey

The research team was hierarchically organized. Roscoe Pound was appointed Director. Chao-lung Yang served as his Assistant Director. Together, they supervised a staff of fifteen assistants.<sup>83</sup> Dr. Yang's services were especially important to Pound, and he specifically cited:

the cordial and effective cooperation of Dr. Yang during the whole time it [the 1947-1948 report] covers. He has acted as guide, interpreter, and invaluable source of information as to things which a foreigner must but cannot expect unaided to know as to Chinese customs and affairs. The work of the Survey would hardly have been possible without his zealous and intelligent participation.<sup>84</sup>

Pound also remarked on the high calibre of his assistants:

Of the fifteen assistants who worked with me in the survey every one was a graduate of a first rate law school -- several graduates of American law schools, some trained in France, some trained in England, some in Tokyo before the war, and the greater number in first class American law schools.<sup>85</sup>

Pound's knack for surrounding himself with outstanding colleagues reached even to China. Together, they would collect the data Pound deemed necessary for an adequate

assessment of the Chinese legal system. On December 14, 1947, he wrote, "We start a survey of administration of justice at Shanghai next week"<sup>86</sup>

### Data Collection Strategies

The Survey faced the difficult task of collecting comprehensive data on a traditional legal system only recently reconstituted following removal of the Japanese occupation forces. Pound wrote:

The Japanese had utterly destroyed transportation facilities, had completely disrupted the educational system, and had no less disrupted the whole administration of justice. When I went to China in 1946 the government was still struggling to re-establish the courts in many places where the judges had been compelled to flee. Often the records of the courts had been destroyed, the court buildings dismantled to be used as barracks, and the libraries scattered or destroyed.<sup>87</sup>

Pound designed a triangulated approach through which data obtained during site visits could be checked against official statistics (such as they were) and corroborated by sending questionnaires "to competent persons in other localities."<sup>88</sup> Each approach brought needed information.

Previously Collected Data. First, Pound set his Assistant Director, Chao-lung Yang, the task of discovering



what previously collected statistical data resided within the Ministry of Justice. Pound prepared a detailed guide to focus Yang's search, and noted that Yang's discoveries would help Pound write the questionnaires and instructions for field reporters.<sup>89</sup>

Questionnaires. Pound prepared eight questionnaire schedules, each directed to a specific audience: procurators,<sup>90</sup> judges, teachers of criminal law, practising lawyers, physicians, chambers of commerce, civic clubs, and newspapers.<sup>91</sup> The questionnaires were distributed, often through professional organizations, prior to field visits in each city. At each survey site, the research team made a preliminary review of questionnaire returns to help focus the field inquiries.

Field Visits. Data collection trips were made to six cities. Pound and his team interviewed personnel in all departments of the criminal justice system, including judges, lawyers, clerks, and other officials. They made site inspections of relevant facilities, including: courts, police departments, crime detection laboratories, reformatories, prisons, and prison hospitals.<sup>92</sup> Facility visits featured interviews with staff members, inspection of physical facilities, and on-site review of available

records. There is no indication, however, that Pound's teams interviewed the inmates of correctional or detention facilities.

The itinerary and schedule of the 1948 inspections are reported in Appendix G. The survey, begun in December 1947, continued into August 1948. On 16 July 1948, Pound wrote, "All goes well. I am busy on a Survey of the Administration of Justice in Eastern China, which had me three weeks on the road."<sup>93</sup> The pace at which Pound led his survey team is remarkable for a man of seventy-five years of age.

### Results

Results of Pound's survey in China were published in English only in the most summary terms. Pound's (1949, 1953) published accounts focused on his conclusions and recommendations rather than the empirical substance of the survey work per se. The survey was oriented to immediate practical ends, not to abstract theoretical questions. With the completion of the data collection phase in late 1948, and the fall of the Chiang Kai-shek government in 1949, comprehensive analysis of the data no longer filled a practical need and apparently no final report was written. In addition to the Survey, Pound also investigated the quality of legal education in China<sup>94</sup> and also wrote the first parts of a treatise on the Institutes of Chinese Law

"when it became necessary to leave."<sup>95</sup> Pound's appointment came to an end in December 1948.

Pound concluded that the Chinese legal system was in reasonably good shape in 1948. He wrote to a colleague in 1950, "the codes which had been adopted before the Japanese invasion were excellent."<sup>96</sup> Based on first-hand investigation, Pound observed, "the administration of justice in China at that time would compare favorably with the administration of justice anywhere." "The room for reform," he continued, "was not in the law or the courts, although a great deal was to be done to make the codes thoroughly workable." He found correctional institutions "well conducted" and "where there were deficiencies I found the Ministry of Justice zealous and active to remedy defects."<sup>97</sup>

In Pound's view, it was not the courts, but the general administration of government that needed reform. He observed that "getting rid of the old type of war lord provincial governor was not easy."<sup>98</sup> But he cautioned:

One must remember that our American state governors would not always make one hundred per cent. rating by the standards that people seem to want to apply to China in a period of reconstruction after eight years of enemy occupation.<sup>99</sup>

"I repeat," he concluded, "it was not a question of sincere efforts on behalf of legal reform. Legal reform was not what was needed but thorough reconstruction." And, he believed, "the government was earnestly and effectively at work at that task."<sup>100</sup>

Structurally, Pound occupied an official post in the Chiang Kai-shek government and invested much thought and effort on its behalf. The programs Pound sought to set in motion were just underway in 1948. Surveys of justice were only one part of his larger plan. In 1947, Pound had proposed a "five point program" for the Ministry of Justice to follow during the first few years of "reconstruction." These points were: (1) conducting surveys of criminal and civil justice, (2) conferences of judges, law teachers, and lawyers at national and provincial levels, (3) writing a coordinated interpretation of the institutional framework of Chinese law, (4) revitalization of legal education and revision of the legal curriculum, and (5) improved organization and effectiveness of bar associations.<sup>101</sup> By late 1948, Pound observed progress on all fronts. It was no doubt a bitter blow for him to see his work fall asunder in such short order.

In September 1948, Pound was still hard at work. He reported to his sister, Olivia, "I have ahead of me: A report on a year's work, three lectures for a law school at

Peiping, an address before the Chinese Sociological Society at the end of the week, and a report on principles of a juvenile delinquency law."<sup>102</sup> On 2 October 1948, Pound addressed the annual meeting of the Chinese Sociological Society on the topic, "Sociology and Jurisprudence."<sup>103</sup> This was the last of Pound's many public addresses in China.

By March 1949, Pound was back at Harvard.<sup>104</sup> Paul Sayre wrote to Pound asking advice about going to China at that time. Pound discouraged him, "If our government persists in abetting the Chinese communists I suspect there will not be much use in Americans going there."<sup>105</sup> Nor did he think Sayre could get a useful picture of China from a short visit, "China has suffered from people who go over there, spend a short time in two or three of the great cities and then come back and write a book."<sup>106</sup>

Sayre apparently pressed Pound for introductions to key jurists in China, whereas Pound, by 12 April 1949, became definite in his admonitions to Sayre. Pound dutifully provided Sayre with the names of judges and lawyers in China whom "it would be most profitable to see," but added:

I doubt whether you could see any of these. Most of them are on the list of what the Communists have designated as war criminals and are likely to have to be in hiding if the Communists cross the Yangtze.<sup>107</sup>

Pound worried that Sayre might then get into trouble:

Possibly if you inquired about any of the men whom I have named you would at once be suspected of spying upon the Communists and would get into difficulties. I am confident that this is not the time for you to go to China.<sup>108</sup>

Pound's prediction was correct; the Communists crossed the Yangtze in late April and liberated Nanking (K'uei 1949).

#### Legacy in Taiwan

With the success of the Communist revolution in 1949, institutional memory of Pound's contributions to Chinese law survived only in Taiwan. Kwan-sheng Hsieh wrote from Taiwan in 1962, on the occasion of Pound's 92nd birthday, to thank Pound again for his earlier contribution.<sup>109</sup> Three years after Pound's death in 1964, a memorial volume edited by Wen-pei Chang (1967), one of Pound's students, commemorated Pound's work as a jurist generally and in China specifically. But the real promise of the Survey of Justice in Eastern China -- the opportunity to rebuild the traditional legal system of a truly continental nation -- was gone. The future of law in China followed a very different model (Hipkin 1980). Pound's efforts in China went largely for naught in the upheaval of mid-twentieth century social change and political revolution.

The extent to which Pound's sociological perspective continues in Taiwan, however, is an open question and is not assessed here. Portions of Pound's analyses were translated into Chinese, and Chang's (1967) appreciative volume also appeared in Chinese. Unfortunately, however, the orthographic character system in which these works were published is being abandoned. Thus, Pound's work in Chinese is accessible only with difficulty to young readers schooled in modern orthography. This major structural shift in a fundamental social institution, language, further isolates Pound's ideas from the very people he sought to serve.

In sum, the Survey of Justice in Eastern China demonstrated Pound's ability to marshal triangulated sociological research techniques to collect data for practical use in a war-ravaged foreign country. Extended field study in China deepened his already serious interest in the comparative study of international law.<sup>110</sup> The China Survey offered Pound an opportunity to shape a major legal system and he eagerly assumed the challenge, and in so doing allied himself with what would become a right-wing government in Taiwan and pro-Chinese Nationalist political forces in the United States.

### Notes for Chapter Six

1. Roscoe Pound (1929b: 195), from his chapter on "Jurisprudence" in a symposium on Research in the Social Sciences: Its Fundamental Methods and Objectives. Other contributors to the volume included, among others: Robert Park, John Dewey and Charles Beard.

2. Moley was an ambitious, egocentric character who often claimed credit for the work of others. In the course of the present study, I encountered numerous examples of Moley's blatant abuse of his readers' credulity. Thus, his accounts must be carefully scrutinized, especially given the difficulties Pound and Frankfurter suffered at his expense. Moley clearly thought of the Cleveland Survey of Criminal Justice as "his" project although his actual duties and contributions were largely peripheral to the groundbreaking work completed by Pound, Frankfurter, and the Survey's special investigators. Moley's (1922b) 64-page "outline" of the Cleveland Survey of Criminal Justice is a bald example of bureaucratic plagiarism that put Moley's name on a publication without giving proper credit to Pound and Frankfurter or making mention of Pound's (1922a) masterful analysis.

One further example of Moley's specious, self-promoting claims must suffice, as more complete examination of his plastic sense of history and his borderline plagiarisms lie beyond the scope of the present study. In his posthumously-published autobiography, Moley claimed that the Survey of Criminal Justice in Cleveland was distinctive and innovative only because of his "management" of key elements in the project, specifically:

The really distinctive things about the surveys I managed in Cleveland were the manner and devices I employed to use them in educating the community and in securing community cooperation in putting the findings into the institutions involved. Also, my job involved the creation and mobilization of public opinion and the use of the city's power structure to get reforms accomplished. In these respects I made a distinct and somewhat original contribution which was quite generally recognized at the time. (Moley 1980: 143, emphasis added).



In point of fact, the mechanisms for "putting the findings into the institutions involved" were already fully worked out during the Cleveland School Survey, completed by Leonard Ayres in 1917, well before Moley became director of the Cleveland Foundation in 1920. The techniques used by Ayres included conferences between investigators and local authorities, e.g. "After allowing about a week for examining the report a meeting was held of all those persons to whom the manuscript had been submitted" (Ayres 1917: 34). Like the Survey of Criminal Justice, results of the Education Survey were released in installments at noon luncheons to which the public and potentially interested parties were especially invited (Ayres 1917: 35-36). And, according to Ayres (1917: 37):

This laborious process constituted a new development in educational practice and in the technique of the school survey. It might be called bridging the gap between knowing and doing, or it might be termed a process of carrying the community. . . . Its object was to make the entire school system pass in complete review before the public eye.

Ayres also successfully mobilized newspaper coverage of the results of the Education Survey, specifically:

The best judges of news values are the public newspapers, and when they devoted a large part of their front pages to the discussion of educational problems week after week for nearly a year, they did it because they knew that the readers were more interested in those problems than they were in any other part of the current news. (Ayres 1917: 37).

In short, all of the specific techniques for generating public involvement and support that Moley claims as his were already established procedure for surveys sponsored by the Cleveland Foundation. As to Moley's claim that he made effective use of the city's "power structure" to help implement reform, my research to date indicates that the powerbroker behind the scenes was certainly not Moley. Rather, Belle Sherwin (of the Sherwin-Williams paint fortune) was the effective advocate for social reform among Cleveland's elite. She was a member of the board of directors of the Cleveland Foundation and it appears rather that she made use of Moley. This example of upper-class

manipulation of local politics fits the pattern so well explicated in C. Wright Mills' (1956) ever timely study of The Power Elite.

3. Pound to Frankfurter, 11 July 1921, Box 90, General Correspondence, Roscoe Pound, 1919-23, Felix Frankfurter Papers, Manuscripts Division, Library of Congress, Washington, D.C.

4. Memo, 13 January 1921, Box 160, Folder 10, Roscoe Pound Papers, Harvard Law School Library (hereafter, Roscoe Pound Papers HLSL). As it turned out, Frankfurter wrote the foreword and Pound wrote the ninety-three page summary.

5. Frankfurter to Pound, 27 January 1921, Box 206, Folder 2, Roscoe Pound Papers HLSL.

6. Raymond Charles Moley earned his bachelors degree at Baldwin-Wallace College in Berea, Ohio, in 1906. Before pursuing graduate study, he taught high school and spent time in New Mexico and Denver recovering from tuberculosis. In 1914, he received the masters degree from Oberlin College in Ohio. And, in 1918, he earned a doctorate from Columbia University. From 1916-1919, Moley was an Instructor and Assistant Professor of political science at Western Reserve University in Cleveland. But, in 1919, he resigned to become director of the Cleveland Foundation. The Foundation itself was organized in 1914 and had already sponsored major surveys of education in 1915-16 and completed a survey of recreation in 1919. Following the Survey of Criminal Justice in Cleveland, whose success Moley parleyed to his advantage, Moley participated in several surveys on crime and justice in Missouri, Illinois, Virginia, Pennsylvania, Connecticut, California, and Indiana. In 1928, he became Professor of public law at Columbia University and later, in 1934, he became a member of Roosevelt's inner circle of advisors or "brains trust." Subsequently, he served as U.S. Assistant Secretary of State. Following his tour of public service, Moley became editor of Today magazine and was later associated with Newsweek magazine. He was a member of the American Political Science Association. (For additional data, see Moley 1980; and National Cyclopaedia of American Biography D: 21-22).

7. Moley to Pound, 17 February 1921, Box 206, Folder 2, Roscoe Pound Papers HLSL.

8. For a biographical sketch of Julia Clifford Lathrop, see National Cyclopaedia of American Biography 26: 299. For greater detail, see Jane Addams' (1935) My Friend, Julia Lathrop.
9. Pound to Lathrop, 2 February 1921, Box 206, Folder 2. Roscoe Pound Papers HLSL.
10. Ibid.
11. Ibid.
12. For biographical data, see Edith Abbott's (1939, 1950) essays in Social Service Review. See also Felix Frankfurter (1939) and Costin (1983).
13. Lathrop to Pound, 8 February 1921, Box 206, Folder 2, Roscoe Pound Papers HLSL.
14. Pound to Lathrop, 16 February, 1921, Box 206, Folder 2, Roscoe Pound Papers HLSL.
15. Pound to Lewis, 9 March 1921, Box 206, Folder 2, Roscoe Pound Papers HLSL.
16. Lewis to Pound, 10 March 1921, Box 206, Folder 2, Roscoe Pound Papers HLSL.
17. Two women were transferred from the Cleveland Foundation staff and assigned to the Survey Directors' staff. Four additional women were appointed to the Survey's clerical staff (Moley 1922a: 663).
18. Herman Morris Adler, a nephew of Felix Adler, earned his A.B. at Harvard in 1897, continued his studies at Johns Hopkins, and earned the M.D. at Columbia in 1901. After working in New York and Berlin, he served on the staff of the Harvard Medical School from 1906 to 1916. From 1912-1916, he was also chief of staff at the Boston Psychopathic Hospital. In 1916, he completed a study of mental health facilities in Chicago for the Rockefeller Foundation and the national committee for mental hygiene. Subsequently, he was appointed state criminologist for Illinois and, during 1918-1919, specialized in disciplinary psychiatry at military prisons during World War I as a major in the U.S. Army medical corps. From 1919 to 1928 he was professor of criminology and head of the department of social hygiene, medical jurisprudence and criminology at the

medical college of the University of Illinois. Subsequent to the Cleveland Survey, he was a consultant to the National Commission on Law Observance and Enforcement (1929-1933) and he advised the Harvard Law School crime survey in 1934. From 1926 to 1935 he was a director of the Behavior Research Fund and the Institute of Juvenile Research in Chicago (organizations that sponsored delinquency studies by Clifford Shaw). During his career, he wrote several treatises on psychiatry and criminology. His work (Adler 1934) on delinquency in Berkeley, California, directly contradicted central findings reported by Shaw and McKay. In addition to numerous memberships in medical and psychiatric associations, he was a member of the American Institute of Criminal Law and Criminology. (For additional data, see National Cyclopaedia of American Biography 26: 155).

19. Alfred Bettman, originally of Cincinnati, attended Harvard University where he earned the bachelor of arts in 1894 and a law degree in 1898. He returned to Cleveland where he became a successful lawyer. He was a member of the American Sociological Society. Bettman became a leader in the urban planning movement. He joined with Frederick Law Olmstead and others to prepare the Standard State Zoning Enabling Act of 1924. His 1926 amicus curiae brief in the U.S. Supreme Court case, Village of Euclid v. Ambler Realty Company, outlined common law arguments paving "the way for the widespread adoption of land-use regulation" through zoning (Dictionary of American Biography Supplement 3: 66). For comment on his work, see Scott (1969). In 1930, Bettman replicated the "mortality" methodology he developed in the Cleveland Survey for the National Commission on Law Observance and Enforcement. (For additional data, see Dictionary of American Biography Supplement 3: 65-67).

20. Raymond Blaine Fosdick was not a "Harvard man." He earned his bachelors (1905) and masters (1906) at Princeton and his law degree (LL.B.) at the New York Law School in 1908. He lived for a time at Henry Street Settlement House in New York where he held a residency and attend law school at night. Admitted to the New York state bar, he served as an assistant counsel for New York City. In the aftermath of the infamous Triangle Shirtwaiste factory fire of 1911, Fosdick's investigation into the Manhattan Bureau of Buildings discovered widespread corruption and bribery. In 1913, he undertook surveys for the Bureau of Social Hygiene, leaving New York to complete a study of European police systems at the request of John D. Rockefeller, Jr. (Fosdick 1915). Fosdick repeated the study in the United States,

personally examining police operations in all U.S. cities with a population greater than 100,000 (Fosdick 1920). On the basis of his European and American data, Fosdick concluded that European police organizations were greatly superior to those in the United States. During World War I, he completed investigations of military training camps and served as John J. Pershing's civilian aide with troops in the field; and was named undersecretary general to the League of Nations in 1919. In 1920 he formed a law firm and landed John D. Rockefeller, Jr. as his first client. During this period (1920-1936) Fosdick represented Rockefeller interests as a member of several boards of directors, including the Laura Spelman Rockefeller Memorial (which funded several social science research projects, including the Harvard Crime Survey). In 1936, Fosdick withdrew from private practice to become president of the Rockefeller Foundation. Fosdick's life work is chronicled in his books on the League of Nations and the Rockefeller Foundation, as well as his own autobiography. He was a member of the American Academy of Political and Social Science, and the National Institute of Social Sciences. He was an associate editor of the American Journal of Criminal Law and Criminology. (For additional data, see National Cyclopaedia of American Biography 57: 341-343; and Fosdick's (1958) autobiography).

21. Albert Martin Kales was also a lawyer. He earned his bachelors degree at Harvard in 1896 and his law degree, also at Harvard, in 1899. From 1902 to 1916, he was a law professor at Northwestern University, and from 1916-1917, at Harvard University. He was thus particularly well-known to Pound. In addition to a series of legal casebooks, Kales (1914) authored a treatise on Unpopular Government in the United States, a theme echoing Pound's earlier interest in the causes of popular dissatisfaction with the legal system. Following the Cleveland Survey, Kales died prematurely in 1922. (For additional data, see Who Was Who in America 1: 655).

22. Burdette Gibson Lewis, a statistician and economist, was an energetic scholar from Nebraska who earned his bachelors at the University of Nebraska in 1904 (the year after Pound became Dean of the Law School at Nebraska). While at Nebraska, Lewis won the Chancellor E. Benjamin Andrews prize for excellence in public speaking and debate. Lewis pursued additional studies at the University of Wisconsin (where he held a scholarship in economics) and helped the state Legislative Drafting Bureau draft transportation law. At Cornell, he was named a fellow in

political and social science for two years and participated in the stabilization work of the International Monetary Commission. Lewis then served in a variety of capacities, including statistician of New York's Public Service Commission (1st district). As chief executive assistant to the president of the board of aldermen in New York, he completed a three-year survey of the New York city school system. From 1914-1918, he was Commissioner of Correction for New York city where he installed the first mental hygiene clinic in a correctional facility. He also collaborated with Katharine Bement Davis to pioneer developments in parole and indeterminate sentence systems. In 1917, he published a book on The Offender and his Relations to Law and Society, in which he not only cited Pound's (1917) analysis of administrative justice in modern cities as a "brilliant article," but also drew on the works of E.A. Ross, Raymond Fosdick, and Richard Ely. Three years prior to the Cleveland Survey, he was appointed state Commissioner of Institutions and Agencies in New Jersey, and in 1920 was president of the American Association of Public Officials of Charity and Correction. After 1922, Lewis pursued a series of opportunities to explore links between social welfare and the private sector, including several projects with the J.C. Penny Corporation. In addition to other memberships, he was a member of the American Sociological Society and the American Institute of Criminal Law and Criminology. (For additional data, see National Cyclopaedia of American Biography E: 256-257).

23. Reginald Heber Smith was A.B. at Harvard in 1910 and took his LL.B. at Harvard Law School in 1914. From 1914-1918 he was counsel to the Boston Legal Aid Society. Smith joined the Boston law firm of Hale and Dorr, in which he became a partner, in 1919. Smith's subsequent career centered on legal practice and services to the bar. Prior to the Cleveland Survey of Criminal Justice, he prepared Justice for the Poor for the Carnegie Corporation, in 1919. He was associated with the conduct of surveys of the legal system for many years, and, in 1950, prepared a survey on Legal Service Offices for Persons of Moderate Means (Smith 1950). (For additional data, see Who Was Who in America 4: 879).

24. Marion Karl Wisheart was the atypical choice on Pound's roster of investigators. Wisheart was neither a lawyer, physician, nor academic social science expert. He was an accomplished journalist, novelist, and historian. He took his bachelors degree (1911) and his masters degree (1914) at Hamilton College in Clinton, New York. He wrote for the New

York Evening Sun, Leslie's Weekly (where he was European correspondent 1918-1919), and American Magazine. His aptitude as a researcher surfaced in his survey of bipartisan conditions in the New York legislature (conducted for the New York League of Women Voters) and his survey of public opinion (conducted for the Inter-church World Movement) in connection with the steel strike of 1919 (Wisehart 1920). Following the completion of the Cleveland Survey, Wisehart's interests took a turn that differed considerably from the other researchers. Continuing his magazine writing, he also published a novel in 1928, The Kiss. In 1932 he taught an evening course, on writing, at the College of the City of New York, "specializing in principles of narrative psychology and their application in the short story, novel and magazine article" (Who Was Who in America 8: 432). He later wrote an authoritative biography of Sam Houston (Wisehart 1962). (For additional data, see Who Was Who in America 8: 432).

25. Charles Elmer Gehlke, was a sociologist who served as the statistician for the Cleveland Crime Survey. He earned his bachelors degree at Western Reserve University in Cleveland in 1906 and his Ph.D. at Columbia University in 1914. He taught in Youngstown, Ohio, before accepting appointment as an Instructor in sociology at Western Reserve University in 1911. He moved up the academic ranks to full Professor in 1924 and was Professor Emeritus from 1955 until his death in 1968. He was appointed statistician to the Cleveland Foundation in 1920, and was thus a part of the organizational structure administered by Raymond Moley starting in 1920. Moley, a Columbia Ph.D. and formerly an Assistant Professor of politics at Western Reserve University (1916-1919), no doubt felt comfortable with Gehlke. Following the Cleveland Crime Study, Gehlke was associated with several crime surveys, including the Missouri Crime Survey in 1926 (directed by Moley), the Crime Commission of the State of New York in 1927, the Illinois Crime Survey in 1929, and was a member of the staff of the Columbia Law School Survey for an Institute of Criminology during 1929-1930. Gehlke contributed to professional journals and published an analysis of Durkheim's contributions to sociological theory (Gehlke 1915). He collaborated on the Uniform Classification for Judicial Criminal Statistics (Gehlke and Hotchkiss 1931). Gehlke was a member of the American Sociological Society and the American Prison Association. (For additional data, see Who Was Who in America 5: 264).

26. Herbert B. Ehrmann co-authored the report on "The Criminal Courts" with R. H. Smith. Ehrmann was A.B. at Harvard in 1912 and LL.B. at Harvard Law School in 1914. (For additional biographical data, see National Cyclopaedia of American Biography 6: 126).

27. Howard F. Burns co-authored the report on "Prosecution" with Alfred Bettman. Burns was A.B. at Amherst College in 1912 and LL.B. at Harvard University in 1916. (For additional biographical data, see National Cyclopaedia of American Biography 5: 103).

28. Frances Fenton's (1911), doctoral dissertation on the Influence of Newspaper Presentation upon the Growth of Crime and Other Anti-Social Activity, published by the University of Chicago Press, is a viable candidate for the first formal example of quantitative content analysis. Wisehart (1920) first made use of content analysis in a study of the 1919 steel strike. Kingsbury and Hart (1937) note that Wisehart's (1922) study for the Cleveland Crime Survey takes a similar line to work completed by Walter Lippman and Charles Mertz (1920) and the Chicago Commission on Race Relations (1922). Other studies on newspapers and crime (e.g., Highfill 1926; Holmes 1929) soon followed. Robert Park's (1923, 1927) frequently-cited essays on "the sociology of news" appeared well after Fenton's and Wisehart's considerably earlier work.

29. Bettman also used ethnographic techniques. On the assumption that everyday observers of court activity ought to be able to follow court procedures, at least to the extent of knowing what cases were being heard, Bettman hired experienced attorneys and reporters to record their observations of court activity. He compared these observations to the official court records and concluded that even skilled observers (let alone interested members of the public) could not keep track of the business transacted in what were often chaotic court rooms.

29A. Pound to Frankfurter, 11 July 1921, Box 90, General Correspondence, Roscoe Pound, 1919-23, Felix Frankfurter Papers, Manuscript Division, Library of Congress, Washington, D.C.

30. Frankfurter to Williamson, 16 March 1922, Box 160, Folder 10, Roscoe Pound Papers HLSL.

31. Frankfurter to Pound, 3 August 1921, Box 206, Folder 4, Roscoe Pound Papers HLSL.



32. Bettman to Frankfurter, 12 September 1921, Box 160, Folder 10, Roscoe Pound Papers HLSSL.

33. Ibid.

34. Bettman to Pound, 24 September 1921, Box 160, Folder 10, Roscoe Pound Papers HLSSL.

35. Pound to Bettman, 27 September 1921, Box 160, Folder 10, Roscoe Pound Papers HLSSL.

36. Pound to his mother, 29 August 1921, Box 1, Folder 3, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

37. Pound to Sayre, 13 February 1946, Paul Sayre Papers, University of Iowa Archives, Iowa City.

38. Ibid. His daily writing schedule was structured in part by the spatial isolation of the retreat. He noted:

I used to walk in to a country store in the morning and bring back in a knapsack what was required in the way of supplies. Then in the afternoon I could work out on the porch.

The seclusion of his summer house was a curious mixture of modern communication links and traditional backwoods isolation. Once Pound obtained a telephone line, he noted that "at the time the rural mail delivery service was good and I could telephone for something and be reasonably sure of getting it the next day, or at least within two days." At the same time, visitors had a hard time reaching him in person. "As I lived a good way from the railroad, some of them did some remarkable stunts of walking in order to reach me."

39. Pound to Moley, 28 September 1921, Box 160, Folder 10, Roscoe Pound Papers HLSSL.

40. Book Review Digest 1922: 109.

41. Bettman to Pound, 24 September 1921, Box 160, Folder 10, Roscoe Pound Papers HLSSL.

42. Ibid. In my research for this chapter, I read the Plain Dealer for the period covered by the Cleveland Survey (obtained reel by reel on microfilm through interlibrary loan). In my view, based on reading only one of the three

Cleveland papers, Bettman overstated the case. The Plain Dealer was generally supportive of the Survey, and although made a "splash" when the first report was released, devoted considerable space to accurate summaries and verbatim extracts of much of the first and subsequent parts of the Survey. Vindication of Bettman's reaction requires careful reading of the other Cleveland newspapers, a project deferred to a future study.

43. Book Review Digest 1922: 109.

44. Ibid.

45. Criminal Justice in Cleveland was possibly assigned during the 1920s, but the charge records for that period are now lost. Library charge records are typically found on cards in pockets located inside the back covers of library books. When available, these reveal at least portions of the lending or circulation history of given volumes. When charge records are filled to capacity, however, they are routinely discarded and replaced with a new card. Thus, where there is heavy demand for a particular title, the records for that book are typically incomplete since the earliest records were discarded as the cards were filled and replaced. Such cards provide perishable "trace" measures of human activity (Rathje 1979).

Although there are no extant charge records to demonstrate that the Criminal Justice in Cleveland was checked out or assigned to reading rooms at the University of Chicago during the 1920s, it is plausible to assume that it was both read and assigned. Since 1984, charge records at the University of Chicago Libraries (and many other institutions, such as the University of Nebraska-Lincoln) are maintained on computer files, making the old style card record (on which a patron physically signed his/her name and address) not only obsolete, but also unavailable as a publicly available means of documenting readership patterns.

46. Rum1 to Pound, 15 December 1926, Box 206, Folder 10, Roscoe Pound Papers HSL.

47. Frankfurter to Gay, 1 February 1927, Box 206, Folder 9, Roscoe Pound Papers HSL.

48. Ibid.

49. Likewise, the financial aspects of the ecological studies at Chicago by Shaw and McKay were not handled by the researchers but by John Weigel of the Behavior Research Fund.

50. Unsigned, undated, handwritten memo, "second draft -- Crime in Greater Boston," Box 206, Folder 8, Roscoe Pound Papers HLSL. The handwriting is clearly Pound's.

51. Ibid.

52. George Vaillant (1980), in his biographical account of Eleanor Glueck's joint work with Eleanor's husband, Sheldon, makes no mention of Pound's important role. Vaillant notes only that Eleanor Glueck was a research assistant (1929-1953) and then a research associate (1953-1972) in the Harvard Law School where her husband became a professor and was later named the first Roscoe Pound Professor of Law.

53. Van Waters wrote her Ph.D. in 1913 at Clark University. Her dissertation on "The Adolescent Girl Among Primitive Peoples," writes Mennel (1980: 709), anticipated the later studies by Ruth Benedict and Margaret Mead.

54. Miriam Van Waters' work in the 1920s was funded privately by Ethel Sturgis Dummer, and thus it was to Dummer that W.I. Thomas wrote in 1921 (during the dark days of professional ostracism following his dismissal from the University of Chicago) to propose that he write The Unadjusted Girl jointly with Van Waters and that Van Waters be designated as the sole author, thus giving the book a better chance at successful reception. Deegan (1988: 185) reports that Dummer, a Thomas supporter, was "outraged" at Thomas' suggestion, with the result that the book appeared in 1925 under his own name and was a critical step in rebuilding his professional career. The point here is that Thomas, one of America's leading and most influential sociologists, thought highly of Van Waters' abilities.

55. Dummer to Pound, 10 July 1926, Box 34, Folder 698, Ethel Sturgis Dummer Papers, Schlesinger Library, Radcliffe College.

56. Pound to Dummer, 12 January 1927, Box 206, Folder 9, Roscoe Pound Papers HLSL.

57. "Preliminary Outline: Survey of Juvenile Delinquency," enclosed with Frankfurter to Pound, 23 April 1927, Roscoe Pound Papers HLSL.

58. Unsigned to Young, 19 May 1927, Box 206, Folder 9, Roscoe Pound Papers HLSSL. The typed letter to Governor Young was closely edited in Pound's handwriting, and stated:

As part of a project of Harvard University, the Law School is directing an intensive survey of Crime and Law in Greater Boston. Our study seeks to find out the causes that encourage and discourage crime and to determine the efficacy of the existing legal and administrative machinery in checking criminal conduct. In any such study an inquiry into juvenile delinquency is basic. Hence we were particularly anxious to obtain the person best equipped by training and actual experience to take charge of this part of our study. We selected Dr. Miriam Van Waters, the Referee of the Los Angeles County Juvenile Court, for this task. Now that she has been at work for some time and the results of her labors are beginning to show, the wisdom of our selection of Dr. Van Waters for this important work -- important not only to an understanding of crime in Boston, but the general considerations that underlie crime in this country -- is completely demonstrated.

59. Frankfurter to Gay, 1 February 1927, Box 206, Folder 9; Frankfurter to Pound, 23 April 1927, Box 206, Folder 8; Unsigned to Young, 18 May 1927, Box 206, Folder 9, Roscoe Pound Papers HLSSL.

60. In 1927, Sheldon Glueck referred external inquires about the survey to Frankfurter, while keeping Pound internally informed about parallel criminological studies in the department of psychology and the medical school. Glueck to Pound, 25 January 1927, Roscoe Pound Papers HLSSL.

61. Frankfurter, 27 March 1927, "Progress Report for Members of Crime Survey," Box 206, Folder 9, Roscoe Pound Papers HLSSL.

62. Frankfurter, "Progress Report for Members of Crime Survey," 27 March 1927, Box 206, Folder 9, Roscoe Pound Papers HLSSL.

63. Frankfurter, "Progress Report for Members of Crime Survey," 27 March 1927, Box 206, Folder 9, Roscoe Pound Papers HLSSL.

64. Typescripts of ten unpublished reports and memos, many authored by Sheldon Glueck between 1926 and 1928, are found in Sheldon Glueck, Survey of Criminal Justice in Boston, Red Set, Harvard Law School Library.

65. In October 1929, Van Waters was asked to direct a major study on juveniles for the Wickersham Commission (Van Waters to Comstock, 27 October 1929, Box 106, Record Group 10, National Commission on Law Observance and Enforcement, U.S. National Archives).

66. R. Pound to O. Pound, 30 September 1947, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

67. Ross to Pound, 8 May 1911, Box 227, Folder 28, Roscoe Pound Papers HLSSL.

68. R. Pound to O. Pound, 22 August 1935, Box 1, Folder 6, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society. Pound was asked to make several speeches during his visit, but reported happily, "I dodged the Rotary Clubs here."

69. Pound to [Hsieh], [1 December 1945], reproduced in Chang (1967: 5). Reproduction of the letter is very poor. Chao-lung Yang was Director of the Department of Criminal Affairs in the Ministry of Justice.

70. R. Pound to O. Pound 19 February 1946, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

71. Pound to Hsieh, 7 August 1946, reproduced in Chang (1967: 153).

72. Ibid.

73. Pound, "Report," 27 February 1947, Paul Sayre Papers; Pound, "Report on Work of 1947-1948," Paul Sayre Papers, University of Iowa Archives, Iowa City; Pound to Colegrove, 16 August 1950, Box 1, Folder 21, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

74. Pound to Hsieh, 7 August 1946, reproduced in Chang (1967: 153).

75. For example, Unsigned to L. Pound, 20 August 1947, Box 1, Folder Correspondence 1947, Louise Pound Collection, State Archives, Nebraska State Historical Society. Louise Pound's correspondent, recently returned from China, wrote:

I too am glad I am out of China though I used to like it very much . . . . Travelling in China in the old days had a great charm, though it was by no means either comfortable or hygienic! But in the interior the population was more primitive, more honest and more humane. Cities like wars spoil the people and now China is spoiled for a long time.

76. R. Pound to O. Pound, 28 August 1947, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

77. For example, see R. Pound to O. Pound, 15 November 1946, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society, where Roscoe Pound noted:

It is pretty hard to get anything to remote parts of China. Indeed, I did not find it easy to get things to Nanking in any reasonable time. I think probably Louise would try the Red Cross at Shanghai that would be the most likely method. But when I tried to communicate with Ciuccia [Pound's familiar name for his wife] between Nanking and Tokyo last summer through the Red Cross which General McArthur's aide (a former student of mine) said was the only means of communication, things got very badly mixed up and the results were discouraging.

78. R. Pound to O. Pound, 30 September 1947, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

79. Ibid.

80. The five relevant reports by Roscoe Pound are: (1) "Report," 17 February 1947, Paul Sayre Papers, University of Iowa Archives, Iowa City; (2) "Second Report for 1947," [29 September 1947], Paul Sayre Papers; (3) "Preliminary Draft of Project of Survey," [30 December 1947], Box 191, Folder 9, Roscoe Pound Papers, Harvard Law School Library; (4) "Request for Information in Preparation for the Survey,"

[1948], Box 191, Folder 9, Roscoe Pound Papers, Harvard Law School Library; and (5) "Report on Work of 1947-1948," [1948], Paul Sayre Papers. It was reports such as these that Pound sent to Paul Sayre, his biographer, to give Sayre an account of the work in China (Pound to Sayre, 16 October 1947, Box 1, Folder 20, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society).

81. Pound, "Preliminary Draft of Project of Survey," [30 December 1947], Box 191, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

82. Pound, "Preliminary Draft of Project of Survey," [30 December 1947], Box 191, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

83. Pound, "Preliminary Draft of Project of Survey," [30 December 1947], Box 191, Folder 9, Roscoe Pound Papers, Harvard Law School Library; "Report of Work of 1947-1948," [1948], Paul Sayre Papers;

84. Pound, "Report of Work for 1947-1948," [1948], Paul Sayre Papers.

85. Pound to Colegrove, 16 August 1950, Box 1, Folder 21, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

86. R. Pound to O. Pound, 14 December 1947, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

87. Pound to Colegrove, 16 August 1950, Box 1, Folder 21, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

88. Pound, "Request for Information in Preparation for the Survey," [1948], Box 191, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

89. Ibid.; Pound, "Report on Work of 1947-1948," Paul Sayre Papers, University of Iowa Archives, Iowa City.

90. The office of "procurator," Pound remarked to a colleague, is "not easy for the Anglo-American with no knowledge of comparative law to understand" (Pound to Colegrove, 16 August 1950, Box 1, Folder 21, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical

Society). Elsewhere, Pound (1953: 11-12) presented this definition:

The Chinese procurator has no exact equivalent in Anglo-American legal terminology. He differs from both the examining magistrate and the public prosecutor in the Anglo-American system, being something of each, and from the officials of the Ministere public in the Continental system. He has not only the power to prosecute, i.e., to initiate and conduct prosecutions, but the powers of a judge d'instruction on the Continent, those of a grand jury and of an examining magistrate in the Anglo-American system, and of a coroner and coroner's jury in the English common law. He is at once a criminal judge of the first instance, a judicial criminal investigator, and a public prosecutor. As to the institution of a prosecution and as to whether a prosecution instituted by someone else shall go on, he is like a French judge d'instruction.

91. Pound, "Report of Work of 1947-1948," [1948], Paul Sayre Papers. University of Iowa Archives, Iowa City.

92. Ibid.

93. R. Pound to L. and O. Pound, 16 July 1948, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

94. Pound, "Report of Work of 1947-1948," [1948], Paul Sayre Papers.

95. Pound to Colegrove, 16 August 1950, Box 1, Folder 21, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

In early December 1948, The Communist offensive threatened the city of Pengpu, the next major settlement on the rail line running north from Nanking. For detailed "situation maps," see China Weekly Review (December 4, 1948): 12-13.

96. Ibid.

97. Ibid.

98. Ibid.



99. Ibid.

100. Ibid.

101. Pound, "Second Report for 1947," [29 September 1947], Paul Sayre Papers, University of Iowa Archives, Iowa City.

102. R. Pound to O. Pound, 26 September 1948, Box 1, Folder 7, Nathan Roscoe Pound Collection, State archives, Nebraska State Historical Society.

103. Pound, "Report of Work of 1947-1948," [1948], Paul Sayre Papers, University of Iowa Archives, Iowa City. Pen-wen Sun, president of the Chinese Sociological Society, wrote to Pound:

On behalf of the Chinese Sociological Society, I have the honor to extend to you a cordial invitation to deliver a lecture on "Sociology and Jurisprudence" at the Ninth Convention and the Twentieth Anniversary of the Society, in the Auditorium of the National Central University on Saturday, October 2, at 9:30 A.M. (Sun to Pound, 25 September 1948, Box 191, Folder 3, Roscoe Pound Papers, Harvard Law School Library).

Pound was accompanied to the meeting by Chao-lung Yang who on other occasions acted as translator during Pound's public addresses.

104. Pound to Sayre, 8 March 1949, Paul Sayre Papers, University of Iowa Archives, Iowa City.

105. Ibid.

106. Ibid. Affirmative perspectives on the validity of short sociological field visits are found in Reinharz (1984: 264-368) and Hill (1981). E.A. Ross (1923) addressed the methodological issues involved in his six-month study tour of China. Of course, the foundational statement on sociological observation in foreign societies is Harriet Martineau's (1838/1989) How to Observe Morals and Manners.

107. Pound to Sayre 12 April 1949, Paul Sayre Papers, University of Iowa Archives, Iowa City.

108. Pound to Sayre, 12 April 1949, Paul Sayre Papers, University of Iowa Archives, Iowa City.

109. Pound to Hsieh, 21 November 1962, reproduced in Chang (1967: 59).

110. Pound served on the International Claims Commission in the 1920s, a post that drew "heavily on Roscoe Pound's knowledge of international law and particularly on his knowledge of comparative law" (Sayre 1948: 249). And in 1953, for example, he attended the Academie Internationale de Droit Compare in Paris, going on to lecture in India and Sweden (R. Pound to O. Pound, 22 June 1953, Box 1, Folder 8, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society).

## CHAPTER SEVEN

HATTIE PLUM WILLIAMS  
AND THE WICKERSHAM COMMISSION, 1929-1931:  
A CASE STUDY IN PARALLEL BIOGRAPHY<sup>1</sup>

Scholarship is a mission. It needs many  
workers. If you can add just one cubic centimeter  
to the mass achievement of scholarship,  
you have not lived in vain.

-- Louise Pound<sup>2</sup>

### Introduction

This chapter explores the 1929-1931 National Commission on Law Observance and Enforcement from the perspective of three parallel biographies. The sociobiographies of Roscoe Pound, Edith Abbott (Figure 7.1), and Hattie Plum Williams (Figure 7.2) each reflect different aspects of President Herbert Hoover's Commission on Law Observance and Enforcement. Each occupied a different location in the bureaucratic structure of the Commission and thus experienced very different lifeworlds. The Commission's work provides clear examples of differentially distributed

instrumental rewards and bureaucratically-generated alienation. Contributors to the Commission experienced little in the way of liminality and *communitas*. Roscoe Pound served as one of eleven Commissioners appointed by President Herbert Hoover, and was thus at the top of the bureaucratic pyramid. Edith Abbott, Dean of the Graduate School of Social Service Administration at the University of Chicago, occupied a middle-level position, and was a principal investigator in her own major study (Abbott 1931; National Commission on Law Observance and Enforcement 1931e).

Hattie Plum Williams, Professor and former Chair of the Department of Sociology at the University of Nebraska, was called upon to be an unpaid fieldworker, to gather data and systematize them in a rigid format stipulated by others whom she never met face-to-face. Reconstruction of Hattie Plum Williams' "view from the bottom" is given special emphasis in this chapter, thus purposefully opening the disciplinary record to more closely examine an unknown woman's work in sociology. Pound, Abbott, and Williams were all highly talented social scientists with deep roots in Nebraska, all worked conscientiously on their sociological contributions to the Commission, and all were largely erased from the history of sociology.

Erasure of these sociological contributions would not be problematic to history of sociology were it not for the fact that the "Wickersham Commission" (as the Commission was popularly known) came to be identified in sociology solely with the work of two sociologists associated with Ernest W. Burgess at the University of Chicago. Clifford Shaw and Henry McKay (1931) authored only one of several reports that comprise the collective research output sponsored and published by the Wickersham Commission, but their fame within sociological circles is documented in myriad footnotes and bibliographic references in the sociological corpus. By virtue of aggressive campaigning on behalf of the Shaw-McKay study by University of Chicago sociologists, it became a frequently-cited item in published sociological works -- to the exclusion of all other contributions to the Wickersham Commission.<sup>3</sup>

Roscoe Pound's relationship to the Shaw-McKay study is particularly interesting given the study's keystone position in the intellectual architecture of human ecology studies at Chicago. Pound was the co-author of the founding work in American plant ecology (Pound and Clements 1898a) and it was Pound's botanical partner, Frederic Clements, whom Park and Burgess (1921) cited as the intellectual model for their work in human ecology (Chapter 3). Pound was no doubt relatively "out of touch" with recent technical developments

in plant ecology by 1929, but he was overwhelmingly competent to evaluate the crude adaptations of ecological concepts then being employed by the human ecology school of sociology sponsored by Ernest W. Burgess at the University of Chicago.

Pound's central role in organizing, shaping and interpreting the Commission's investigations -- together with the major studies authored by Edith Abbott, Mary van Kleeck, Sam Bass Warner, Miriam Van Waters, and the unsung dedication of sociological fieldworkers such as Hattie Plum Williams -- are today little-known aspects of the National Commission on Law Observance and Enforcement. Their comparative neglect is due in part to the hegemonic promotion of the Shaw-McKay study by University of Chicago sociologists to the exclusion of all other aspects of the Wickersham Commission.

This chapter specifically explores the intersection of two related themes in history of sociology. These are (1) the erasure of women's contributions to the intellectual and empirical foundations of the discipline of sociology and (2) women sociologists' experiences as researchers in large, hierarchically-structured sociological investigations. To explicate these issues, this chapter reconstructs the organizational context of Hattie Plum Williams' little-known contributions to the National Commission on Law Observance

and Enforcement in 1931. As Williams was the first known woman chair of a coeducational, doctoral degree granting department of sociology, her professional experiences are of particular disciplinary relevance to sociology.<sup>4</sup> The work of the Commission illustrates the complex interconnections between gender, bureaucracy, the modern nation state, and the history and structure of sociology as a discipline.

Max Weber (1958b) astutely noted that bureaucratic organization results in maximum instrumentality for those who (like Roscoe Pound) occupy the top positions in hierarchical structures. Bureaucratically-organized national commissions are no exception. Weber also asserted that modern bureaucracies move increasingly toward legal-rational norms of conduct. Rosabeth Moss Kanter (1979), however, observed that Weber's thesis was true for men but not for women. Women in bureaucracies, she demonstrated, were more likely to be treated under paternal norms. This situation is doubly difficult for women scholars who conduct sociological investigations as members of bureaucratic organizations insofar as the typical hierarchical structure shapes not only their day-to-day experience as researchers, but also patterns the subsequent historical accounts of their investigations. Frequently, women's experiences in bureaucracies and the historical accounts of their work therein follows anything but

legal-rational norms. These issues are explored here by detailing Hattie Plum Williams' work on behalf of the National Commission on Law Observance and Enforcement.

Thus, this chapter (1) outlines (a) the organizational and disciplinary context of historical interpretations of the National Commission on Law Observance and Enforcement and (b) women's roles within the Commission's many investigations. (2) The chapter examines the linkage between state control and bureaucratically-organized research such as that conducted by the Wickersham Commission. (3) Hattie Plum Williams' specific contributions to the Commission's studies are briefly stipulated. (4) The bureaucratic process through which Williams became a field investigator for the Commission is examined in detail as are, (5) Williams' research environment and activities in the field. (6) The last section of the chapter is a retrospective critique of Williams' participation in the Commission's studies, including: (a) the lack of professional acknowledgment she received, (b) her research experience compared to more favorably situated contributors, specifically those of Edith Abbott and Roscoe Pound, (c) her apparent refusal to coerce students into the service of state interests, and (d) the uniqueness of Williams' contributions in a gendered as well as hierarchically-ordered research environment.





Figure 7.1. Edith Abbott, 1920

Source: University of Illinois at Chicago, The Library,  
Jane Addams Memorial Collection



Figure 7.2: Hattie Plum Williams, circa 1916

Source: University Journal (October 1916): 20.

### A National Crime Commission

At the behest of President Herbert Hoover, the National Commission on Law Observance and Enforcement undertook several investigations of crime as the United States wrestled with the Great Depression and widespread, flagrant noncompliance with the 18th Amendment (which prohibited the manufacture and sale of alcoholic beverages). There was concern at the time that disrespect for law (as a result of widespread tolerance for prohibition violations) might spread to threaten the social order. Hoover appointed eleven Commissioners: George W. Wickersham, Chair; Henry W. Anderson; Newton D. Baker; Ada L. Comstock; William I. Grubb; William S. Kenyon; Monte M. Lemann; Frank J. Loesch; Kenneth Mackintosh; Paul J. McCormick; and Roscoe Pound. The Commission began work in 1929 and concluded its investigations in 1931, publishing a series of major reports (for complete bibliography, see Setaro 1942: 79-81). This was a new approach to crime and, according to sociologist Richard Quinney (1970: 306), it was "until recent times, the major experiment with a crime commission on the national level."

The Commission both reinforced past approaches to the study of crime and extended scientific criminology into previously unexplored areas:

Its findings and recommendations in many ways paralleled those of the Cleveland Survey, but it broke important new ground as well. (McClain 1983: 510).

The Commission specifically "called attention to the deplorable, chaotic state of the federal substantive criminal law" (McClain 1983: 510). Sociology was an important focus in the investigation. For example:

An entire volume, The Causes of Crime, took a broad sociological view of criminal behavior and suggested methods for attacking the conditions that, according to the commission breed crime. (McClain 1983: 510).

The Commission's many projects also included a national study of the fiscal cost of criminal justice in the United States (Simpson, Franzen, and Hubbell 1931). Professor Hattie Plum Williams of the University of Nebraska was one of many investigators who contributed to this project.

Holes in the Disciplinary Record. Women sociologists who undertook studies directed by the National Commission on Law Observance and Enforcement had various experiences as a function of their location within the Commission's hierarchically-structured research machinery. Hattie Plum Williams labored in a niche near the bottom of the pyramid, while better-known sociologists, Edith Abbott (Deegan 1979,

1988a, Forthcoming a) and Mary van Kleeck (Lewis 1980; Ball Forthcoming b), occupied middle-range positions. Despite the entree accorded Abbott (Dean of the University of Chicago's School of Social Service Administration) and van Kleeck (Director of the Department of Industrial Studies at the Russell Sage Foundation), their work (as well as that of Williams) is systematically neglected in historical accounts of the discipline of sociology.

Not only the work of Hattie Plum Williams, Abbott, and van Kleeck, but also the work of Commissioner Roscoe Pound and the National Commission on Law Enforcement and Observance as a whole is largely unknown to American sociologists. This is no accident, and results directly from structural advantages within the discipline of sociology used to promote some sociologists rather than others. The distribution of these advantages has, historically, favored the department of sociology at the University of Chicago. This fact is important for understanding the subsequent history of the Wickersham Commission as reported in the published corpus of American sociology.

The Wickersham Commission tapped the talents and resources of many sociologists -- male and female -- across the country, although this fact is not recorded in subsequent accounts of the sociological discipline. Floyd

House (1936), for example, called attention only to the report prepared by Chicago sociologists Clifford Shaw and Henry McKay (1931). The Shaw-McKay study on juvenile delinquency, House (1936: 335) maintained, was an "outstanding example" of human ecology and urban sociology as it developed at the University of Chicago under the "general advice and counsel" of Ernest Burgess. More recently, Martin Bulmer (1984: 4) continued the exclusionary litany, noting that the major empirical studies conducted by the Chicago school of sociology include "Shaw and McKay's seminal and classic work on the causes of delinquency, Social Factors in Juvenile Delinquency (1931), carried out for the Wickersham Crime Commission," while failing to mention the work of Chicago sociologist Edith Abbott. Most readers of the sociological record would reasonably conclude that the Shaw-McKay study was the substance if not the whole of the Wickersham report.<sup>5</sup>

The line of disciplinary historians who repeatedly emphasize the accomplishments of male sociologists while excluding mention of women sociologists reaches from the past to the bookshelves of today. The modern procession from decade to decade includes: House (1936), Barnes (1948b), Farris (1967), Bulmer (1984), and the numerous volumes of the Heritage of Sociology series edited by Morris Janowitz and published by the University of Chicago Press.

A recent addition to the aforementioned series is Lester Kurtz' (1984) extensive annotated bibliography on the Chicago school of sociology. Kurtz' work is more progressive in that women sociologists such as Edith Abbott at least gain mention in his introductory essay. She "taught sociology," Kurtz (1984: 82) observes, "at the University from 1914-1920," but he omits any citation of her sociological writings in the bibliographic section of his book, thus structurally excluding her from a major reference source for future generations of sociologists. This despite the fact that the Publications of the Members of the University, 1902-1916 (University of Chicago, 1917: 79-80) shows that by 1916, Abbott, a lecturer in sociology, had already published three books, nine articles in scholarly journals, and several book reviews. Perhaps Kurtz (1984: 82) justified the bibliographic exclusion on the basis of his further observation that Abbott "was never promoted to assistant professor and remained a 'lecturer in Methods of Social Investigation.'" As an afterthought, Kurtz (1984: 82) notes that, "Eventually she became Dean of the School of Social Service Administration" and, while Dean, maintained ties with Chicago sociologists. Serious discussions of women's contributions to American sociology are limited in number and are very recent (e.g., Deegan, 1978, 1981a, 1983,

1987, 1988a, 1988b, 1988c, 1988d, 1988e, Forthcoming g; Fish, 1985).

Apologists for the Chicago school of sociology cannot claim the potential defense that Abbott's work was unknown to the male Chicago sociologists of the time. Edwin H. Sutherland, criminologist and professor of sociology at the University of Chicago, wrote an unsolicited letter to the Commission in 1931 and requested proofreader's copies of the studies then in progress:

If your reports could be made available I can avoid duplication of work and can utilize the results of the studies for purposes of comparing with earlier studies. I am especially anxious to see the reports of Abbott on Nationality and Crime, Shaw and McKaye [sic] on Social Factors in Juvenile Delinquency, Ploscowe on Causative Factors, and Van Waters on Juvenile Delinquency.<sup>6</sup>

Advance, confidential copies were sent to Sutherland and he acknowledged receipt of reports authored by Abbott, Ploscowe, Shaw, van Kleeck, and the nationally-known anthropologist, jurist, penologist, and social worker, Miriam Van Waters (Mennell 1980)<sup>7</sup> Annotated mailing lists show that advance critical review of van Kleeck's work, in particular, was sought by Clair Wilcox (Director of Research for the Wickersham Commission) from University of Chicago sociology professors, specifically: William F.



Ogburn, Ernest W. Burgess, and Edwin H. Sutherland.<sup>8</sup> University of Chicago sociologists were intimately aware that the Shaw-McKay study was not the only game in town.

The relative prominence of Shaw's work (without here intending any slight to its authentic intellectual substance) is partially explained by bureaucratically-organized promotions of the work by John C. Weigel of the Behavior Research Fund (the administrative conduit for the Commission's contract with Shaw) and an administrator in Chicago's Institute for Juvenile Research. Both organizations enjoyed close ties to Burgess and the Department of Sociology at the University of Chicago. The Chicago school of sociology's aggressive self-promotion is evidenced, for example, in a letter from Weigel to Clair Wilcox:

Professor Burgess and I feel that this contribution by Shaw and his assistants is the most thorough study of its kind ever made, and feel it would be desirable to have Shaw in Washington when the report is considered.<sup>9</sup>

Weigel requested government funds to send Shaw to Washington, but noted that if the money was not available, it could be found in Chicago. Even Roscoe Pound was subjected to lobbying by Ernest Burgess.<sup>10</sup>

Chicago school sociologists picked and backed projects exhibiting good prospects for high visibility. Conversely, University of Chicago sociologists did not participate in the Commission's nation-wide cost of crime study as did Hattie Plum Williams and scores of other public-minded sociologists. Such participation resulted only in a line of thanks in an appendix, not authorship credit on the title page of a Commission report. The cost of crime study in Chicago was conducted under the supervision of a member of the Illinois Bar Association (National Commission on Law Observance and Enforcement, 1931d: 488), not by University of Chicago sociologists.

Numerous letters in the records of the National Commission on Law Observance and Enforcement from Weigel to Wilcox document the persistent effort by Weigel to promote Shaw's study and bolster the currency of Chicago school sociologists. Weigel frequently reminded Wilcox of Ernest Burgess' high esteem for Shaw's project and Burgess' own "important" input to the work. On May 1, 1931, Weigel wrote to tell Wilcox that "Shaw, McKay, and his other assistants" had worked late and "given up their Sundays and holidays to the venture." Weigel boasted proudly, "We feel sure that the investment is justified."<sup>11</sup> Shaw and McKay were by no means the only contributors who "burned the midnight oil"

(to use Weigel's phrase), but the others did not paint their work in such heroic strokes.

Weigel's letters were replete with concerns about status and the academic pecking order. At one point, Weigel urged Wilcox that Shaw's title should be listed as "Dr." in the final report while that of McKay should be simply "Mr." Weigel also insisted that the report clearly state that McKay was merely an assistant, subordinate to Shaw. Weigel's suggestions were ignored -- someone (apparently Wilcox) scratched through the "Dr." each time it was used to designate Shaw in Weigel's letter. In the final report, both Shaw and McKay were designated as "Mr." and McKay was identified as a collaborator, not an assistant (National Commission on Law Observance and Enforcement, 1931f, I: viii-ix).<sup>12</sup>

Weigel requested extra copies of the Shaw-McKay report and asked also for free franking privileges to distribute the report to wealthy benefactors of sociological research in Chicago. He asked specifically for copies to send to Cyrus McCormick, Jr., vice president of the International Harvester Company; Joseph H. Schaffner, vice president of Hart, Schaffner, and Marx; and Roy Osgood, vice president of the First Trust and Savings Bank of Chicago (all three were board members of the Behavior Research Fund). Weigel also urged distribution of the report throughout the country to

"key persons" that Weigel proposed to identify.<sup>13</sup> Bennett (1981: 202) also reports:

McKay has said that his and Shaw's contribution to the Wickersham Report was the most influential of their books among their colleagues, because Burgess bought a large number of copies and distributed them to sociologists.

Burgess's active promotion of the Shaw-McKay study is evident. At least some, if not all, of the extra copies that Burgess received were provided at government expense.<sup>14</sup>

Given aggressive, bureaucratically-facilitated self-promotion by organizations willing to use government-initiated research to build academic empires and as bait to attract additional finances for Chicago school sociologists, it is not surprising that the Shaw-McKay report pushed aside all other contributions to the Wickersham Commission for self-recognition by University of Chicago sociologists. The consequences for the subsequent historical record were substantial because these male sociologists dominated the premier department in the discipline. Further, they exercised editorial control over two of the major publication outlets for American sociology: the University of Chicago Press and the American Journal of Sociology.<sup>15</sup> For example, Edwin H. Sutherland (1930: 139) used AJS to publish his review of Shaw's Delinquency Areas, wherein he

noted, "This is one of the very important contributions to the literature of criminology."

As a result, one can read the published sociological record today without discovering that while Shaw and McKay prepared the second half of The Causes of Crime (National Commission on Law Observance and Enforcement, 1931f), the first half was written and researched primarily by Morris Ploscowe (who wrote a comprehensive review article) and Mary van Kleeck and her associates (who wrote on unemployment and crime). Nowhere does the modern reader learn in the annals of sociology that major contributions to the Commission were also made by Edith Abbott (who wrote on crime and the foreign born). If the likes of Abbott and van Kleeck can be successfully excluded from the discipline's history, it is no wonder that less strategically-situated women investigators, such as Hattie Plum Williams, are unknown today.

Contemporary Assessments. While the Commission publicly applauded the efforts of all of its researchers, including Shaw, it is instructive to note that the Commission and its staff were not wholly uncritical in their appreciation of Shaw's work. George Wickersham (1931) thought Shaw tried without sufficient analysis to link environment to crime in an overly deterministic fashion. He quipped publicly, "It

would almost seem from the data he has compiled as if crime were indigenous in certain soil, as is malaria or hookworm!" (Wickersham 1931: 4).

The Commission had an opportunity to publish the views of Ernest Burgess, but declined. Ernest Burgess, John Weigel, and Paul Schroeder (Director of the Institute for Juvenile Research) all sent unsolicited memoranda on "Causative Factors in Crime" to the Commission. Receipt was acknowledged but the Commission made no space to publish these unsolicited comments (National Commission on Law Observance and Enforcement 1931f, I: ix-x).<sup>16</sup>

Wickersham (who it was agreed would be the public spokesperson for the Commission) was much impressed by Mary van Kleeck's more sociological (as compared to Shaw's ecologically-oriented) investigation of the causes of crime. Adopting a social institutions position, van Kleeck asked:

If a nation or a community wishes to achieve a more satisfactory law observance and enforcement, what conditions will it seek to establish for the occupational life of the individual and the economic life of the community? (van Kleeck, quoted in Wickersham 1931, 5).

Wickersham (1931: 5) responded to his own rhetorical quotation of van Kleeck, "This question," he said, "strikes at the roots of the problem of crime." Van Kleeck and Abbott not only prepared significant reports for the

Commission (Abbott 1931; van Kleeck, Winslow, and Reid 1931), but also served the Commission in advisory and supervisory roles.<sup>17</sup>

Public response to the Commission's report was mixed. Perhaps the most lucid discussions (both pro and con) appeared in the popular journal Review of Reviews which published a symposium on the Commission's report (Cadman, White, Fisher, Butler, Boyd, and McBain 1931) and related articles by Burdette Lewis (1932) and Pound (1933). In February 1931, speculative newspaper accounts of the Commission's work reached Nebraska and alarmed Roscoe Pound's sister, Olivia. Her brother wrote to reassure her:

I'm not in the least troubled by the foolish stuff the papers write about the report. If you ever take the trouble to read it you'll see there is no disagreement on the facts and that a solid majority agree on most of the conclusions while a minority indicate the conclusions are probably right but want to wait a bit. There is nothing more hopeless than the way the press deals with anything serious.<sup>18</sup>

The massive size of the report meant that few reviewers, even in the professional social science journals, took it on in its entirety. Roy Brown (1932: 620) in a combined review of several new works on criminology wrote in Social Forces:

Each of at least twelve of the fifteen volumes [of the Reports of the National Commission on Law Observance and Enforcement] merits a separate

extended review. Of especial merit, as they appear to this reviewer, are the volumes on The Child Offender in the Federal System of Justice, Crime and the Foreign Born, The Causes of Crime, Lawlessness in Law Enforcement, and The Cost of Crime.

No individual volumes were reviewed in the American Journal of Sociology and only two volumes were reviewed in Social Service Review. The Shaw-McKay study was updated and re-issued by the University of Chicago Press as a freestanding volume (Shaw and McKay 1942, 1972) completely dissociated from the other Wickersham Commission reports. This "new" University of Chicago Press publication was and is lauded by University of Chicago sociologists as a "magnum opus." The Journal of the American Institute of Criminal Law and Criminology ran a series of volume-by-volume reviews in 1931 and 1932, including Shalloo's (1932) detailed review of Ploscowe, van Kleeck, Shaw, and McKay's contributions to the Report on the Causes of Crime.

#### The Cost of Crime

Hattie Plum Williams assisted the Commission by completing two studies on the cost of crime incurred by municipal governments in Nebraska. These studies (Williams 1933a, 1933b) were collapsed together with similar reports from across the country to form the empirical basis of a



Wickersham Commission report on "The Cost of Administration of Criminal Justice in American Cities" (Simpson, Franzen, and Hubbell 1931). Clarence Shenton (1932: 782) outlined the project as a whole in his review:

This report represents an effort to learn what crime costs the United States in dollars and cents. It includes studies of the cost of criminal law administration to the federal government and to 300 of 365 cities of over 25,000 population; of the published material on state and municipal costs of administering criminal justice; of the cost of state police, state penal and correctional institutions, and parole agencies; of private expenditures from crime prevention; and of private and community losses from crime.

The directors of the study, said Shenton, "are to be congratulated upon the courage with which they went through with an enormous and perplexing task." As one of numerous fieldworkers, Williams's contribution received no specific mention. There is little in the records and reports of the Wickersham Commission, other than perfunctory notes of appreciation, by which to judge the contemporary reception of her work on the project. An outline of Williams' abilities can be gleaned from the contemporary record, however.

Williams' Sociological Record. The contemporary record shows that Hattie Plum Williams was especially qualified to conduct the Nebraska study for the Wickersham Commission. Born in 1878, she was 53 years old in 1931. She attended Iowa State University and received her bachelor's degree from the University of Nebraska in 1902 and a master's degree in 1909. She earned her doctorate under the guidance of George E. Howard in 1915. That same year, she was hired to fill the position in the Department of Sociology vacated by Lucile Eaves who went to Boston to become director of the Research Department of the Women's Educational and Industrial Union. Williams was intelligent and well-educated, a Phi Beta Kappa.

In his history of the Department of Sociology at the University of Nebraska, George E. Howard (Forthcoming) recalled:

From the outset Dr. Williams has proved herself possessed of the qualities of a strong and zealous teacher. More and more young men and women have crowded her class-room. Much time is devoted to individual students. Her office has become a veritable conference room.

Williams emphasized applied sociology and became chair of the Nebraska department in 1922, a post she held until 1928 when she was succeeded by Joyce O. Hertzler. The sociology courses taught by Williams in the mid-1920s included:

Introduction to Sociology; Modern Social Betterment Movement; Community Problems; Poverty and Dependence; Criminology; Immigration; American Race Problems; Child Welfare; and Seminar in Medical Sociology. Williams, an energetic and selfless sociologist, frequently set aside her research interests on immigration and naturalization (e.g., Williams 1912, 1915) to make room for community service and the demands of her university and her students.<sup>19</sup>

Although prevented from attending fully to her research interests, Williams enjoyed substantial support during the years prior to the Wickersham Commission investigations. She was highly regarded by her students and her applied research seminars were legend.<sup>21</sup> Olivia Pound (brother to Roscoe Pound) wrote enthusiastically about Williams' contributions to the local community and the University of Nebraska (O. Pound 1916).<sup>21</sup>

George E. Howard supported Williams' work until his death in 1928. He first encouraged her to pursue the academic career which led to her appointment as Professor of Practical Sociology.<sup>22</sup> Professional colleagues across the country, including Emory Bogardus, admired her research.<sup>23</sup> After Williams was appointed Chair of the Department of Sociology at Nebraska, Howard wrote a strong and carefully documented letter to the University Chancellor recommending a substantial raise in Williams' salary and her promotion to

full Professor.<sup>24</sup> Surprisingly, Williams earned a salary higher (although Howard thought it too low because it was lower than that of her male colleagues at Nebraska) than did Edith Abbott as Dean at the University of Chicago.

Williams resigned her Chair in 1928 and returned to a full-time teaching position. Teaching and research, rather than administration, were her primary interests. When Howard died in 1928, Williams lost a dependable, supportive, and much admired sociological ally (Williams 1929). When Willard W. Waller arrived on the Nebraska campus as a new sociology professor in 1929, he came to consider Williams the "powerhouse of the department" even though Hertzler was then Chair (Goode, Fusternberg, and Mitchel 1970: 33). Although paid a higher salary than Abbott at Chicago, Williams occupied a structurally less powerful position in the educational hierarchy when, in 1931, she agreed to participate in the Wickersham Commission studies. As a former Chair of a graduate department of sociology from 1922 to 1928, however, Williams was no stranger to the bureaucratic milieu.

Bureaucracy, Data Collection, and State Control. The rationale for a new and comprehensive study of the cost of crime was stated by George Wickersham, Chair of the National

Commission on Law Observance and Enforcement, and the eleven members of the Commission:

When we commenced our labors some two years ago, we found that no comprehensive scientific study of the cost of crime and criminal justice in the United States had ever been made. Conceiving such a study to be an essential part of the thorough inquiry into the general problem of law enforcement which we were commissioned by the President and authorized by the Congress to make, we determined to undertake it (National Commission on Law Observance and Enforcement 1931d: 1).

The Commission appointed Sidney Simpson (an attorney who specialized in administrative law) to be Director of the Study of the Cost of Administration on Criminal Justice. The scope of the study was formally outlined by the Commission (National Commission on Law Observance and Enforcement, 1930).

Simpson's project is a classic example of bureaucratically-organized data collection in modern nation states. The purpose of such studies, according to Giddens (1985), is to rationalize and materially facilitate increased state control of internal affairs under the rhetoric of science, efficiency, and economy. Upon review of the data amassed by the Wickersham Commission, the Commissioners concluded:

One of the most important conclusions reached, and one with which we thoroughly agree, is that the cost of administering the criminal law, while large, is of less economic importance than the losses inflicted by the criminal, so that it is much more important from an economic standpoint to increase the efficiency of the administration of criminal justice than to decrease its cost. True economy in administering the criminal law may well require in many instances the material increase of expenditures for enforcing the law in order to secure increased efficiency and in order to deal adequately with new types of crime and "improved" methods of criminals. (National Commission on Law Observance and Enforcement, 1931d: 4).

Their recommendation, to increase expenditures "for enforcing the law," while simultaneously recommending further data collection, i.e., "nation-wide thorough and scientific studies of racketeering and organized extortion and of commercial fraud" (National Commission on Law Observance and Enforcement, 1931d: 7), is compatible with Michel Foucault's (1979: 293-308) conception of a "carcerel society" in which the state increases its panoptic (Foucault 1979: 195-228), bureaucratically-organized surveillance capabilities specifically to increase internal discipline and conformity (Giddens 1985).

Simpson enlisted legions of willing field investigators who, without Federal remuneration, collected, tabulated, and reported specified data in predetermined formats on the costs of crime incurred by municipal governments in 300

cities. Reliance on volunteer data collectors facilitated the municipal data part of the project which, it was estimated, would have cost more than three times "the amount made available by the commission for the entire cost of crime investigation" (Simpson, Franzen, and Hubbell 1931: 253). University-based sociologists were among those specifically targeted for recruitment as "cooperative" investigators. Below, I argue that Williams' participation in the project did not reflect agreement with the intrusion of bureaucratic state interests into the campus. First, however, Williams' substantive research for the Wickersham Commission is summarized.

The Substance of Williams' Investigations. The content of Williams' contributions to the Wickersham Commission is found in two typescripts (Williams 1933a, 1933b) bound as one volume and housed in the open stacks at the University of Nebraska library (not in the archives, at least at this writing). Her reports were submitted to the Wickersham Commission in 1931 and thus the date on the typescripts, 1933, is an unsolved, but minor mystery. The 1933 typescripts may represent revisions of small errors later detected by Williams and/or her intent to make a permanent record of her full investigations available to Nebraskans. Her studies of the cost of criminal justice in Omaha and

Lincoln, Nebraska, were modeled, as bureaucratically required, chapter for chapter, table for table, on a pilot study of Rochester, New York, (National Commission on Law Observance and Enforcement 1931b) conducted by Hazen C. Pratt in 1930. Williams' studies of Omaha and Lincoln incorporate data from the U.S. Census; state and local statutes; and local sources, including clerks of court, police departments, county treasurers, etc.

In each report, the assembled data are first used to outline the social and economic conditions in each city. Chapter Two is a detailed description of the cost of operating police services. The third chapter is an accounting of the cost of prosecution in the criminal justice system. Chapter Four specifies the cost to operate the criminal courts, including the county court and the juvenile court, and analyzes the comparative costs of trials in criminal and civil cases. The fifth chapter examines the cost of penal and corrective treatment, including probation, county jail, and juvenile detention.

The final two chapters present a summary and discussion of the collected data. The Omaha and Lincoln studies were completed essentially in a month and a half of frenetic work necessitated by rapidly approaching, bureaucratically-imposed deadlines. Locating a field investigator, such as Williams, to conduct the studies was a bureaucratic,



time-consuming process, particularly as it unfolded at Nebraska, that contributed materially to structuring the unreasonably compressed time period within which the Nebraska studies were executed.

Locating an Investigator in Nebraska. Sydney Simpson (Director of the Study of the Cost of Administration of Criminal Justice) began his search for investigators by sending letters of inquiry to the presidents of major universities and other research organizations. To secure studies of Lincoln and Omaha, Nebraska, Simpson wrote on October 16, 1930, to request the assistance of Edgar A. Burnett, Chancellor of the University of Nebraska.<sup>25</sup> Simpson sought university cooperation in obtaining data at little cost to the Wickersham Commission. Simpson's letter, from one bureaucrat to another, from the institution of politics to the institution of education, set in motion a chain of events that ended ultimately in Hattie Plum Williams' contributions to the Wickersham report.

Simpson proposed that graduate students could become unpaid fieldworkers who would then be granted permission to use their own data for their theses:

We are endeavoring to enlist the cooperation of the universities of the country with a view to having studies of this subject carried out in various cities and states by graduate students in

the social sciences under faculty supervision. Each investigator will be permitted to use the report of the study made by him as the basis for a thesis for an academic degree, if so desired. It is felt that the making of these studies should be of real value to students who make them, in that an opportunity will be offered to take part in a cooperative research project on a national scale, and at the same time to come into direct contact with the practical operation of each city studied under the auspices and with the assistance of the Commission.<sup>26</sup>

Not only were the student investigators to be unpaid, gratis faculty supervision was also assumed. Simpson expressed his view that "the Commission would be very grateful for your cooperation in this project."<sup>27</sup> Two bureaucrats "cooperated" with each other, constructing a framework wherein university subordinates were cajoled to adopt a bureaucratically-structured timetable for completing an externally-determined research agenda. Chancellor Burnett passed Simpson's request to a subordinate, J.O. Hertzler, Chair of the Department of Sociology.

Hattie Plum Williams, Professor of Sociology, was soon identified -- most likely by Hertzler -- as a faculty member who demonstrated Nebraska's potential for cooperation in the proposed project. Simpson responded to Hertzler approximately two weeks after the initial inquiry to Burnett, commenting:

I am glad to note from your letter of October 22, that Dr. Hattie Plum Williams is directing a group of her students in a preliminary survey of the available material as to the cost of administration of criminal justice in Lincoln.<sup>28</sup>

That Williams expressed interest and set her students loose in a preliminary way is not surprising. Olivia Pound (1916: 21) wrote about Williams' work at the University of Nebraska:

Through her official connection with the department of sociology of the University she has enlisted a small army of workers who are assisting the schools in surveys, in actual social work in the night school and in social centers and in the work of helping foreign Americans to become fully naturalized

For years, Williams' graduate students had conducted independent community studies of social conditions and social problems. But, expression of "interest" was far from a commitment to conduct specific local studies as designed by the director of the Wickersham study on costs of crime.<sup>29</sup>

In the present case, students and faculty were free to structure their own investigations. This likely run seriously counter to William's student-centered, community-oriented pedagogic philosophy. The questions to be asked and the format for reporting answers were to be standardized and externally determined. Simpson wrote:

To insure the comparability necessary for a statistical analysis of the results of the studies, there has been prepared a manual outlining the project in detail. A copy will be forward to you in the near future.<sup>30</sup>

A blue-ribbon advisory panel of experts, including sociologists Edith Abbott and Robert Lynd, was assembled by the Wickersham Commission to review the data collecting instructions, giving added authority to the field manual (National Commission on Law Observance and Enforcement 1931a) and the standardized methodology outlined therein.

The field manual was mailed to Lincoln in early November, but by year's end Simpson had not received a reply affirming Nebraska's participation. He wrote to Hertzler:

I have been looking forward to hearing from you as to the progress of the study of the cost of administering criminal justice in the state of Nebraska, with particular reference to the cities of Lincoln and Omaha. The report of the model study of the city of Rochester is now on the press, and a copy will be mailed you shortly, It is hoped that this report will serve as a model in setting up the figures.<sup>31</sup>

The fall semester at the University of Nebraska ended with no firm commitment. Simpson sent reminders during January, 1931, and forwarded a copy of the Rochester study (National Commission on Law Observance and Enforcement, 1931b) which

was to serve as an explicit and carefully-observed model for studies of all other cities.<sup>32</sup>

By March 26, Simpson became impatient and fired a telegram to Hertzler:

Would appreciate it if you would advise us by wire collect as to what progress has been made with the studies of Lincoln and Omaha being carried out by the university.<sup>33</sup>

Simpson either understood (incorrectly) that researchers at the University of Nebraska had previously agreed to conduct the studies, or he presented that "understanding" as a gesture designed to call forth administrative guilt. If the latter, the ploy did not work, there was no response.

Two days later, March 28, Simpson opened both barrels of his administrative and patriotic pen in an urgent telegram directly to Williams. Would Nebraska be the only state in the nation to let down the Commission?

Vitally important for our investigation that study of the cost of administration of criminal justice in Omaha along lines of manual be made. Stop. Can you advise prior to April seventh whether such study can be made. Stop. We are particularly anxious to cover all the cities of the country over two hundred thousand. Stop. Have arranged studies in all such cities except Omaha and Akron Ohio and are now successfully arranging study in Akron. Stop. In view of this circumstance can we count on university for Omaha study?<sup>34</sup>

Making an end run around Hertzler and Burnett, Simpson's bureaucratic arm twisting was expertly applied, he got his reply from Williams on 31 March:

After conferring with Dr. Senning chair political science department we have agreed to undertake jointly the completion of Omaha and Lincoln study on basis of Rochester model. Send copy model report to Senning. Am writing details.<sup>35</sup>

Five months after the initial overture to the University of Nebraska, Williams personally accepted formal responsibility for the Nebraska part of the project. Arrangements that Chancellor Burnett and Chairperson Hertzler could not conclude in five months of letters, telegrams, and memos Williams finalized in four days. Her activities during the remainder of the 1931 spring semester demonstrated the depth of her personal commitment -- once made -- and also demonstrated the personal cost of five months lost in bureaucratic, time-consuming paper shuffling between Director Simpson, Chancellor Burnett, and Chairperson Hertzler.

Williams' Nebraska Field Studies. The day following her agreement to complete the Nebraska portion of the Wickersham Commission study of crime costs to municipal governments, a document was prepared, probably by Williams, outlining three

"studies in penology" then in progress on the Lincoln campus. Two were student projects. The third was the Wickersham-sponsored study:

A study of Administration of Criminal Justice in Omaha and Lincoln. Carried on jointly by the Departments of Sociology and Political Science. To be completed in early summer.

By Dr. Hattie Plum Williams  
Dr. J.P. Senning.<sup>36</sup>

This memo, as did Williams' telegram of March 31st, underscored the expectation of cooperation with and assistance from Senning in the Department of Political Science. As it developed, this partnership did not materialize -- Williams carried the full brunt of the study over the next hectic month and a half.

Williams engaged an undergraduate assistant and launched the field investigations in Lincoln and Omaha. Simpson originally approached Chancellor Burnett to secure studies by graduate students, but the delays now required Williams' active and direct participation in order to meet Simpson's deadline. Time was too short for a graduate student to reasonably take on the study (assuming that a willing and interested candidate could be found) as a thesis project. Williams wired Washington, D.C., on April 18th:

Today am devoting full time spring vacation to Lincoln Omaha study two students assisting. Stop. Expecting to complete it by May first delivery.<sup>37</sup>

Williams scrapped any vacation plans she may have had and worked on the study. She was ready to start the final draft on April 22nd.<sup>38</sup>

With the May 1st deadline little more than a week away, Williams discovered flaws in the data tabulations on which the report was based. At variance with the field manual, her undergraduate assistant consistently compiled data for the wrong year. Williams wrote to Simpson on April 24th:

I have been delayed a bit by an error in dates which the student made. She called the year ending August, 1929 as 1929-30! and I did not discover the error until I had the first draft entirely completed. It has been necessary for me to do the whole of Chapters II, III, and V over, but they are now finished and I can keep the stenographer busy.<sup>39</sup>

In two short days, Williams not only completed the first draft of the Lincoln study, but also detected the student's data compilation errors, recompiled the data, and completely rewrote three chapters of the report.

The Lincoln study was back on track due to Williams' personal and single-minded effort. The Omaha study was another matter. Williams wrote:



My worst difficulty lies in the fact that the student who did the Omaha costs made the same mistake on the year, and I am at a loss to know what to do. She has the data for 1929 instead of 1930. That means that I cannot be sure of having the Omaha study to you by May 1. I have arranged my work at the University so that I could give all next week to the Omaha data, but now that the year is wrong, it will be impossible for me to correct the figures and get them into final shape for you on time. I do not want to send you the Omaha study for a year other than 1930, unless tardiness in receiving the material makes it useless to you. In that case, all I can see to do is to take the data as she has turned it in.<sup>40</sup>

The approaching close of the school year was problematic. End-of-semester duties pressed her for time and her student assistants were graduating seniors. She wrote to Simpson:

If I got the 1930 data, I do not see how I can have it to you until the first of June for the students are seniors and the last few weeks of school do not permit extra duties. I have a second student assisting this week who has done excellent work and I only regret that I did not discover her ability and the other's disability until this week. I feel sure that she and I could have the revised data to you within a week or ten days after we can begin work on it.<sup>41</sup>

Williams asked Simpson for guidance: Did he want a timely report with noncomparable data, or an overdue study with appropriate data?<sup>42</sup>

A telegram on April 28th brought Simpson's prompt reply:

Under circumstances believe it best to use Omaha data for fiscal year nineteen twentyeight nineteen twentynine as otherwise report would come in too late.<sup>43</sup>

Accommodation to artificial, bureaucratically imposed deadlines now forced additional compromises and also increased Williams' workload.

In a follow-up letter, Simpson advised using the 1928-29 data, but urged Williams to make an informed estimate of the degree of divergence between the 1928-29 and 1929-30 data. If known differences were significant, Simpson said:

It may be necessary to make adjustments along these lines, and then work out an estimated figure for 1929-1930. We are doing this in some other cities where 1930 data is not available.<sup>44</sup>

The report for Lincoln was completed on time and shipped to Simpson in triplicate, but the May 1st deadline passed while Williams juggled her time to meet Simpson's request for empirically-grounded projections for Omaha based on the 1928-29 data.

Williams' exceptional effort to finish the Lincoln study took its physical toll and delayed her work on the Omaha projections. She wrote to Simpson:

Your letter reached me last Friday noon -- too late for me to plan anything for Omaha for the weekend. It would have been impossible anyway because my eyes gave out, as they always do when I work for ten days or so over figures. It was necessary to rest them for a few days. Monday began registration week -- one of the two busiest weeks of the entire school year.<sup>45</sup>

Undaunted, Williams forged ahead:

I am planning to go to Omaha Monday of next week and stay until I secure the necessary facts. If the two years are not materially different, I shall follow your suggestion to use the data collected and save a few days in getting the report to you.<sup>46</sup>

Williams at last publicly confided that Senning's failure to assist on the project put her in conflict between loyalty to her students and her commitment to the Wickersham project:

I do not see how I can take another week away from my classes -- in justice to my students, and yet I feel under obligation to keep faith with you for the University. Dr. Senning has been unable either to give any help on the study or to furnish any student service -- both of which were contemplated when I made the promise to you for the University.<sup>47</sup>

Simpson replied, expressing his regret to Williams that "you personally should have been put to so much inconvenience in securing the Lincoln and Omaha data." (41)

Williams adopted two ploys to obtain the required data from Omaha, (1) making personal visits to key record-keeping offices and (2) sending letters to Omaha officials (including the county treasurer and a city prosecutor) whom she thought might volunteer to spend a few hours tracking down specified information for her.<sup>49</sup> Both strategies produced results, but not without bureaucratic frustration.

Williams' got sufficient data in two difficult days of field inquiry in Omaha to make the projections for 1930. In her report, she wrote:

The Omaha study has been carried on under peculiarly difficult circumstances, the data being secured first by the student who had assisted in the Lincoln study, then checked over, in Omaha, for two days by the writer and an assistant. Unfortunately, there was no opportunity to complete the manuscript while in the city, and further items and verification were secured by letter, wire, and telephone.  
(Williams, 1933a: 53)

Bureaucratic obstacles confronted Williams at many turns, including face-to-face data collection in Omaha:

The attitude of officials toward the inquiries has been most interesting, ranging all the way from cordial response and generous assistance to curt refusals to furnish data. In securing the pay roll from one of the offices, the clerk lumped together the salaries of three of the clerical forces. In reply to a request to give the salary of each person separately, she refused on the ground that "no one had any right to ask the amount of her salary." Unless one went armed

with the introduction of a prominent or influential citizen, there was a tendency on the part of officials to show annoyance at the request and to question one's right to make the inquiry. One of the most important of the officials gave the least assistance, and that in a most grudging way. And yet, on the face of the leaflet they handed you, was emblazoned this sentence, "These records are open to the public and inspection of the same by the citizens is always welcome." (Williams 1933a: 53-54)

Despite such hurdles, Williams' efforts finally approached conclusion.

Three weeks after the 1st of May, she dispatched the completed Omaha report to Simpson.<sup>50</sup> In a subsequent letter, she noted a few minor errors she discovered in the Lincoln report, and promised to send a corrected copy in the near future:

It involves so little and the figures offset each other that I would not mention it if it were not that I am satisfied with nothing less than perfection in so far as it is possible for me to achieve it.<sup>51</sup>

She concluded:

I am sorry that the work had to be done under the hurried circumstances and yet I doubt if the results obtained would have been different. I am glad the University could at least try to help out the Commission.<sup>52</sup>

The study -- as close to perfection as Williams could make it with the time and resources available to her -- was now complete.

Upon receipt of the Omaha study, Simpson wrote to express his gratitude.<sup>53</sup> George Wickersham, chair of the National Commission on Law Observance and Enforcement, also wrote a brief note to Williams expressing his appreciation for Williams' "public spirited cooperation." He added that, "The studies for the cities of Lincoln and Omaha, made by you, have been of most valuable assistance to the Comission."<sup>54</sup>

#### Williams' Studies in Retrospect

With the advantage of hindsight, Williams' participation in the Wickersham Commission study can be critically examined. Four features of her involvement with the Wickersham Commission studies deserve special note. Specifically: (1) the lack of professional acknowledgment given to her work, (2) her research experience compared to more favorably situated contributors, (3) her refusal to coerce students into the service of state interests, and (4) the uniqueness of Williams' contributions in a gendered and hierarchically-ordered research environment.

Professional Acknowledgment. Williams worked extra-long hours, exhausted her eyesight, and devoted her spring vacation to the project. Nonetheless, her services were obtained without cost to the Federal government or additional cost to the University of Nebraska. The Wickersham Commission's only expense was to pay \$42.94 for stenographic services that Williams personally engaged without guarantee of re-payment in order to meet the Commission's deadlines. Compare this to the budget Clifford Shaw submitted to the Commission (including a salary of \$333.33 per month for Shaw, \$250 per month for McKay, \$110 per month for stenographic service, and \$100 per month for clerks) totaling \$4,900.00 for a three-month project.<sup>55</sup> As a university professor, Williams was a state employee. She undertook the study -- in addition to her regular professorial duties -- as a felt obligation on behalf of the University of Nebraska.

Although she conducted a large and concentrated study on behalf of the University of Nebraska, there is no record in her extensive correspondence to indicate that her efforts were recognized or commended by university officials. Chancellor Burnett's only communication to Williams during this entire period was a short note expressing his admiration (having read a newspaper notice to the effect) that she recently invited a few students to her home for

tea. Williams' reply is a model of restrained incredulity. Perhaps, she hinted, the Chancellor would be better informed about her activities (including the fact that she had for years regularly invited students to her home) if local newspapers (in which she assiduously avoided notice when possible) were not his major source of campus intelligence.<sup>56</sup> Bureaucratically courteous to the end, the Wickersham Commission publicly acknowledged (in an appendix) not only Williams for her part in making the studies of Lincoln and Omaha, but also acknowledged Chancellor E.A. Burnett and Chairperson J.O. Hertzler for "cooperation in arranging for these studies" (National Commission on Law Observance and Enforcement 1931d: 498). Burnett and Hertzler, however, contributed centrally to the manufacture of the severe temporal obstacles that Williams faced in the field.

As an apparent token of thanks, the Commission sent Williams a copy of a report on penal institutions, probation, and parole (National Commission on Law Observance and Enforcement 1931c).<sup>57</sup> Amazingly, this was not the report in which her data were used! Her work, together with that of field investigators from more than one hundred research organizations, was utilized in Simpson, Franzen, and Hubbell's (1931) report on municipal crime costs.



Williams wrote to George Wickersham in search of a full set of the reports on the costs of crime:

I wonder if you will be so kind as to tell me how I can receive the complete set of the reports. I thought possibly they were being sent to collaborators in the study, but I have received only one number and should like the complete publications. I shall be grateful to you if you will direct my inquiry to the proper persons as I do not know whom to address now that the Commission is dissolved.<sup>58</sup>

There is no record of a reply.<sup>59</sup>

There is also no evidence that Williams ever published an article or presented any papers based on the data she collected. This is fully understandable if she saw the work primarily as "service" rather than "research." The only known copies of her reports are the typescripts at the University of Nebraska (Williams 1933a, 1933b). Whereas Shaw's work at Chicago was parlayed to professional advantage in sociological circles, Williams (as well as Abbott and van Kleeck, for that matter) took no part in such self-aggrandizing tactics. In sum, very little professional recognition or courtesy resulted from her selfless, service-oriented completion of the Lincoln and Omaha studies.

Variations in Sociobiographical Experience. The Wickersham Commission bureaucratically enlisted three accomplished, Nebraska-trained scholars in the service of their government: Williams, Abbott, and Pound. All earned bachelor's degrees at the University of Nebraska and all were Phi Beta Kappa. Williams and Pound earned their doctorates at Nebraska, and Abbott's was earned in political economy at the University of Chicago. All three were early members of the American Sociological Society.<sup>60</sup> Williams was a student of George Howard and became the first known woman chair of a coeducational, doctoral degree granting department of sociology. Roscoe Pound was a student of Charles Bessey and became Dean of the Harvard Law School. Edith Abbott, a former student of Louise Pound, Roscoe Pound, and Edward A. Ross at Nebraska, became Dean of the Graduate School of Social Service Administration at the University of Chicago. The experiences of the latter two scholars, structurally situated in positions of prestige and advantage at Harvard University and the University of Chicago, differed markedly from the research milieu of Hattie Plum Williams who remained at the University of Nebraska as a Professor and former Chair of the Department of Sociology.

(i) Roscoe Pound. When the dean of the Harvard Law School accepted a position on the eleven-person Wickersham Commission, he threw himself into the work with characteristic verve, dedication, and thoroughness. As a Commissioner, he was centrally involved in structuring the scope, form, and content of the Commission's inquiries. It was Pound who first "referred to the importance of considering the entire cost of criminal justice" during the initial meetings of the Commission, thus setting the framework for the study in which Williams eventually participated.<sup>61</sup> Pound helped select the Commission's panel of expert consultants and special research directors, such as Edith Abbott, Henry McKay, Clifford Shaw, Sydney Simpson, Mary van Kleeck, Sam Bass Warner, Zechariah Chafee, and Clair Wilcox. Alfred Bettman, whom Pound obtained for the Cleveland Survey, was engaged to conduct the Commission's study of prosecution. Of all the commissioners, Pound was the most active interpreter of the Commission's findings and drafted most of the Commission's conclusions.<sup>62</sup> Pound later described his work on the Commission in a letter to Paul Sayre (who in 1945 gathered materials for a biography on the Harvard jurist):

The National Commission on Law Observance and Enforcement had a suite of rooms in the Tower Building, 14th and K Streets, Washington. I remember Newton Baker saying in an after dinner

speech once that the way things were done was that I wrote everything, he signed everything, and Max Loenthal objected to everything. But I am afraid I should not like to have that published. As a matter of fact, I generally did draw the first draft which was then debated and overhauled and sometimes sent back for me to rewrite and sometimes referred to a committee to revise.<sup>63</sup>

He continued:

Manuscripts of most of what was done (in my handwriting) are in the Law School library here, but I do not think it expedient to publish that fact. Mr. Wickersham did not care to have them get abroad and on his suggestion I took them and deposited them in the library where some day they may be of use to the historian. You could see them here, if you like, but I do not think we should publish that they are in existence.<sup>64</sup>

Pound served on several of the Commission's committees at various times, including Committees on (1) The Causes of Crime, (2) Prohibition, (3) On Courts, (4) On Prosecution, and (5) Statistics of Crime (on which he served as chair).<sup>65</sup>

Pound's hand in the Committee on the Causes of Crime deserves particular emphasis given the prominence of the Shaw-McKay report in sociological chronicles. The archival record of Pound's involvement is sketchy, due in large part to the fact that Clair Wilcox served efficiently as an administrative buffer between the Commissioners and the special experts such as Shaw. Minutes of the Commission's closed door meetings are notable for their concise brevity.

When all was said and done, and Ploscowe's, Shaw's, and van Kleeck's studies were digested, the Commissioners (save one) concluded:

We find it impossible comprehensively to discuss the causes of crime or factors in nonobservance of law. Criminology is remaking, the social sciences are in transition, and the foundations of behavior are in dispute. It would serve no useful purpose to put forth theories as to criminality or nonobservance of law, either generally or in America, on the basis of some one current psychology or social philosophy, with the certainty that it represents but one phase of the thought of the time and will not long hold the ground. (National Commission on Law Observance and Enforcement 1931f, I: vii).

The chair of the Committee on Causes of Crime, Henry W. Anderson, dissented from the general agreement on the inadequacy of the research record.

Anderson (1931) wrote a sixty-page dissent which broadly reviewed the findings of the Commission's special studies on causes of crime. He was particularly struck by van Kleeck's study showing the need to better assist prison inmates, on release, to make effective transition to gainful employment in civilian life. While acknowledging the ecology of crime documented by Shaw and McKay, Anderson concluded that crime was a complex issue rooted in socio-economic causes that were only partially understood. On close reading, Anderson's conclusions follow those of the

Commission as a whole, in that he acknowledged the complexity of crime. Anderson thought, however, that the best available studies at least identified areas in which further research was sorely needed. He proposed that organized study be coordinated nationally by a federally-funded Institute for Human Research. Although he voted with the majority, Pound had a direct hand in shaping Anderson's moderate "dissent." Characteristically brief entries from Pound's diary for 1931 include the following notations:

- June 3 -- "Begin work for Col. Anderson on report on Causes of Crime."
- June 4 -- "Work on report for Col. Anderson."
- June 5 -- "Work on report on Causes of Crime."
- June 6 -- "Work on report on Causes of Crime for Col. Anderson. Take train for Boston."
- June 8 -- "Take train for Washington."
- June 9, -- "Afternoon, work on Col. Anderson's report."
- June 21 -- "Go over Col. Anderson's MS. of draft on Causes of Crime at his request."
- June 24 -- "Afternoon, I write part for Col. Anderson's draft."
- June 27 -- "Put in morning at offices of Com. in conference with Judges MacIntosh and McCormick and Col. Anderson re. report on Causes of Crime."
- June 29, -- "Confer with Col. A. re his report. Say goodbye to all."\*\*

Thus, more than a full week of Pound's time during the last month of the Commission's existence was devoted to productive work on the final form in which the Report on the Causes of Crime finally appeared. Close readers of

Anderson's "dissent" will easily discern Pound's influence throughout the report.

It is notable that the special study assigned to Shaw and McKay makes no general causal claims. Shaw and McKay (1931: v) wrote in their preface:

A complete understanding of delinquent behavior necessitates a thorough study of both the individual and the social milieu to which he is responsible. Probably all factors, constitutional, mental, emotional, and social, contribute to delinquency and must be taken into consideration in the study and treatment of a given case. It should be born in mind, therefore, that, in keeping with the wish of the Commission on Law Observance and Enforcement, the materials included in this report pertain to only one of the many important phases of the problem. (Shaw and McKay 1931: v).

This caveat places the "magnum opus" (to use Burgess' term) of Chicago school criminology in a much more relativist perspective. Subsequent interpreters have not been as cautious.<sup>67</sup> It is plausible that the Committee on Causes of Crime asked Shaw and McKay to stick to empirical data collection rather than stray into interpretation. In a brief note to Wilcox transmitting the final installment of their study, Shaw pointed out, "You will note that the summary does not include any interpretations or recommendations."<sup>68</sup> It is not clear if Shaw's note is a response to a Commission request to excise or defer from

making causal claims or, if Shaw made this decision himself.<sup>69</sup> Pound's distrust of positivist causal language in the human sciences, however, argues for the former.

Pound's particular focus, and the raison d'être for the Commission, was prohibition. He wrote to Sayre:

The Commission was organized in a number of committees of which the most important was the Committee on Prohibition. That Committee took a great deal of testimony and it was my job to take down the testimony. Also I worked out an elaborate outline on prohibition which served as an index to the testimony, to everything which I could find in print on the subject, and any other material which was accessible. This outlined was used in drawing up the report.<sup>70</sup>

The published record of the Commission does not reflect Pound's central, instrumental, but unobtrusive role.

Pound placed only a two-page statement about prohibition in the Commission's final report. Seen in the context of Pound's theory of interests (Chapter 8), the statement reflects his concern to "adjust" relations in a sometimes fragmented and variegated society. He wrote:

While making enforcement as effective as we may, so long as the Amendment as it is remains the supreme law of the land, we should be at work to enable the fundamental difficulties to be resolved. That, it seems clear, can only be done by a revision of the Amendment. It can be done only by so redrawing the Amendment as, on the one hand, to preserve Federal control and a check upon bringing back the Saloon anywhere, and on the other hand, allow of an effective control



adapted to local conditions in places where, as things are at least, it is futile to seek a nationally enforced general abstinence. (Pound 1931a: 159)

The Commission's proposals became moot in 1933 when the 18th Amendment was repealed.

Shaw and McKay were not alone in "burning the midnight oil." Pound maintained a grueling pace throughout the Commission's work. He wrote to his sister, Olivia, from the Commission's offices in Washington, D.C., in the fall of 1930:

Am trying to teach two days in the week at Cambridge (Monday and Tuesday) and work here the rest of the week. Pretty wearing, but there will be an end presently.<sup>71</sup>

In late spring 1931, there was little respite to report to his sister:

As to plans, my chief idea is to stick it out till June 30 when this commission comes to an end. I never was so tired. I have been teaching my full end too on Monday and Tuesday, keeping up the administrative work of the school, and working at the Commission offices here from Wednesday morning to Saturday evening. This commuting between Boston and Washington has become very tiring. Also the work here has become very heavy . . . . Anyway, I am counting the days (now 32 of them) till June 30.<sup>72</sup>

Three months after the Commission closed its doors, Pound was still recuperating. He wrote his sister a handwritten note at the end of September:

Your letters have been most welcome. It was a shame to leave them unanswered so long. I didn't want to dictate. But my eyes have been so bad since I finished my work with the Commission that writing by hand has become a great trial. I shrink from doing more than sign my name -- which I can do with my eyes shut.<sup>73</sup>

Long months of hard work for the Commission came to an end. Two years later, counter to the general recommendations of the Commission, the 18th Amendment was repealed.

Final distribution of the Commission's report was administratively bungled (although with effort copies could be obtained from the U.S. Superintendent of Documents). Pound reported that, according to Newton Baker (a fellow Commissioner), the functionary who delivered the copies "considered that if each one of us got an equal weight of printed material it did not matter how the weight was distributed."<sup>74</sup> Thus, when Pound received requests for copies, he could not always oblige. "I got no end of copies of some," he wrote, "and only one or two or none of some others."<sup>75</sup> The bureaucratic machine in Chicago, however, was well-oiled. Pound's name was put on a mailing list to receive copies of the Shaw-McKay study (at government

expense) at the request of the Behavior Research Fund. John Weigel, the Fund's secretary, wrote (what appears to be a form letter) to Pound in August 1931. Alerting Pound to the nearing arrival of the Shaw-McKay volume, Weigel wrote, "We trust you will be interested in its contents,"<sup>76</sup> as if Pound had never seen the material before! The male Chicago sociologists were already oblivious to Pound's central role on the National Commission on Law Observance and Enforcement.

As a prominent law school dean called to national service, Pound not only arranged his own academic schedule to fit the demands of the Commission's work, he could also make efficacious adjustments in the work schedules of others, notably Zechariah Chafee, a Harvard law professor who worked on the Commission's report on "lawlessness in law enforcement," and Sam Bass Warner, a member of the Harvard Law faculty who undertook a major statistical study (Warner 1931) for the Commission.<sup>77</sup>

Pound lived most of the first year in Washington, D.C., and during the second year commuted between Cambridge and Washington, D.C., every week for months to finish the Commission's work. He was provided with offices, clerical support, and a full travel allowance. He worked very hard, but with support (Harvard paid his full salary while he worked on the Commission), recognition, and an

instrumentally effective hand. Nonetheless, Pound -- a twenty-year member of the American Sociological Society, a former law professor at the University of Chicago (1909-1910) who had published in the American Journal of Sociology, a researcher whose previous work was cited by Park and Burgess (1924) as an exemplar of sound sociological investigation, a cofounder of the American Institute of Criminal Law and Criminology, and a major architect of the Wickersham Commission's investigations -- was written out of virtually all sociological accounts of the Commission's work. As a powerful, well-recognized American intellectual whose professional identity was not lodged primarily in sociology, Pound could disattend the "slight" from Chicago. Pound occupied a position near the apex of institutional and bureaucratic pyramids in the United States.

(ii) Edith Abbott. The Dean of the Graduate School of Social Service Administration at the University of Chicago also restructured her time administratively to permit full-scale participation in the Commission's inquiries over a period of several months. She was well positioned to tap the vast academic and administrative resources of the University of Chicago and the intellectual and collegial resources of Hull-House (Deegan 1988c). Abbott served as a member of the Advisory Group on the Cost of Administration

of Criminal Justice and also directed an independent inquiry on "Crime and Criminal Justice in Relation to the Foreign Born" (Abbott 1931; Costin 1983: 202). She used her authority to select assistants and supervised the studies published as the commission's Report on Crime and the Foreign Born,<sup>78</sup> for which she also wrote the conclusion (National Commission on Law Observance and Enforcement 1931e: 399-416).

Abbott's work prevailed in the midst of hegemonic disattention and hot debate in the sociological community. It was in the pages of Social Service Review, a journal Abbott edited, that Clifford Shaw's (1929) initial mapping study of juvenile delinquency in Chicago received its first major criticism. Clair Wilcox (the Wickersham Commission's Research Director), outlined several problematic questions about the Shaw-McKay study for the Commission in a detailed memo<sup>79</sup> and someone, probably Wilcox, made careful annotations on a reprint of Neva Deardorff's (1930) highly critical, seven-page methodological analysis of Shaw's (1929) approach to the study of juvenile offenders in Delinquency Areas.<sup>80</sup> This book was important in the sense that it was a model for Shaw's later studies, including his Wickersham study. Among other points, Deardorff (1930: 506) chided Shaw for failure to acknowledge his intellectual debts to pioneer sociologists, including Edith Abbott:

Social workers and city planners have for years been calling attention to the close association of poverty, disease, and crime in deteriorated areas in cities. Booth in the Life and Labour of the People in London, called attention to the "inner" and "outer rings" and described in great detail how the people lived in those areas. An excellent spot map of juvenile-court cases in Chicago itself appears in Breckinridge and Abbott's The Delinquent Child and the Home, published in 1912 and reprinted in 1917 -- a piece of pioneer work to which the authors of Delinquency Areas find no occasion to refer.

Abbott and Breckinridge refined mapping techniques that were initially used in the United States in Hull-House Maps and Papers (Residents of Hull-House 1895; Deegan 1988c). William I. Thomas (Thomas and Znaniecki 1918-1920; Thomas 1928; Bennett 1981) perfected the life-history approach that Shaw also used. Given these predecessors, there is little intellectual or methodological originality in Shaw's work.

Deardorff's analysis appeared in the Social Service Review, a journal published by the Graduate School of Social Service Administration at the University of Chicago and edited by Edith Abbott. Apparently impressed, Wilcox suggested it would be useful to have Deardorff's critique once the final draft of the Shaw-McKay report was in hand.<sup>81</sup> As a result, Abbott and Breckinridge's early work gets its due in the Shaw and McKay Wickersham report. Left to its own devices, however, the male Chicago school of sociology tended toward exclusionary self-promotion.

Nathaniel Cantor's (1932: 786) review of Edith Abbott's Report on Crime and the Foreign Born is caustic and biting:

Dean Abbot [sic] evidently repudiates the need for "scientific integrity" and is willing to discuss or assume the responsibility of a discussion covering several hundred pages without carefully defining the basic terms of the discussion which are "surround by a vagueness akin to chaos." This lack of rigid definition invalidates the Report as a contribution to our knowledge of crime and criminals.

Cantor missed the point that definitional vagueness in available statistics was the primary problem that Abbott (1931) addressed as best she could (given a limited budget for data collection) by insightful critique of the available data combined with small, carefully chosen new studies. Abbott demonstrated conclusively on the basis of broadly-generated data that persons of foreign birth were much less likely to be criminals than were native-born Americans.

Cantor's (1932: 787) other salvo also fell short:

No reputable student of criminology, I believe, would maintain that nationality, as such, is related to the incidence of crime. If this Wickersham Report is intended for students then a straw man has been set up and knocked down. The work has been gratuitous.

Such gratuity, however, is not supported by the archival record.

In 1929, Clair Wilcox prepared a memo for the Commissioners on the question "Is There Undue Crime Among Immigrants?" and drew specifically on Edwin H. Sutherland's address on that topic to the National Conference of Social Work in 1927. Sutherland (arguably a reputable student of criminology) thought that immigrants were less often criminal, but that "the only available statistics are those of prison populations" and these "seem to show an undue criminality among immigrants" when absolute rather than comparative figures were used.<sup>62</sup> The Commission, echoing Sutherland, sought more broadly based data on which to conclusively settle the issue.

Despite Cantor's assertion, there were well-placed social scientists who were convinced of a link between nationality and crime. Ernest Hooton, a Harvard anthropologist, was deeply engrossed in anthropometric studies of race and crime. Hooton enlisted Sam Bass Warner's support (an apparent end run around Pound) for a direct application to Ada Comstock (President of Radcliffe College and one of the eleven Commissioners) for support of Hooton's Lombroso-based studies of immigrant criminals. Comstock forwarded the matter to Clair Wilcox. Wilcox observed that the Social Science Research Council had earlier spent \$16,500 (and the Milton Research Fund added \$7,700) on Hooton's research (which promised to "establish



clear relationships between race and crime and between nationality and crime.") Hooton's work had had sufficient credibility to attract recent research funding, and he had garnered Sam Bass Warner's clear support.

But, Wilcox was skeptical. Hooton's funds had dried up, and Wilcox wanted to know why. The research was dubious in Wilcox' view, and he noted in a letter to Comstock that he was "particularly disturbed by the suggestion [on Warner's part] that such findings might be applied in determining our national immigration policy."<sup>83</sup> Pound, in particular, had long been incensed by those who tried to blame the "crime problem" on foreign immigrants. In 1925, for example, he wrote to Albion Small that, "a real scientific study might be worth while." He continued:

If any one thinks that the trouble with enforcing the Volstead Act is due simply to foreigners, he simply has to mix a little while in the best American society and notice that the bootlegger's product is everywhere in evidence. The high-tone Anglo-American may not do the selling, but he furnished a very large part of the market without which the selling would not go on.<sup>84</sup>

Wilcox and the Commissioners were clearly interested in and disturbed by the issue of immigration and crime, Cantor notwithstanding. The matter ought to be settled empirically. Thus, as one of the nation's leading authorities on immigration (Abbott 1924, 1926), and criminology (Abbott

1915, 1916; Abbott and Breckinridge 1921), Edith Abbott's assignment was to clarify matters and move beyond assertions based solely on data from prison populations.

Of her ability to conduct this work, the commissioners wrote:

Dean Abbott's long and distinguished career as a student and teacher of social economics, her membership in learned societies and associations devoted to social research, and her authorship in the fields of women in industry, immigration, juvenile delinquency, and social science generally, not only make her one of the most distinguished scholars in the general field of social economics but particularly qualified her to direct this particular study. (National Commission on Law Observance and Enforcement 1931e: 3).

While not able to guide the overall shape of the Commission's inquiries as did Pound, Abbott was invited and agreed to conduct a study of her own design supervise research on a topic of longstanding professional interest to herself.

Roscoe Pound was one of Abbott's teachers at the University of Nebraska (Abbott 1919: 312), and he had a high opinion of her work. When Abbott finished her Immigration: Selected Documents and Case Records in 1924, she sent a copy to Pound, who replied:

Many, many thanks for your book on Immigration. It is indeed much needed, and I rejoice to have it, although I must say the material which you

set forth is bound to make every thinking  
American thoroughly ashamed.<sup>85</sup>

She was also a former student of Louise Pound, Roscoe's sister, at the University of Nebraska (Costin 1983: 18). Further, as a graduate student at the University of Nebraska, Abbott had taken E.A. Ross' seminar on cities.<sup>86</sup> Abbott also knew Roscoe Pound collegially from their joint participation in the American Institute of Criminal Law and Criminology (Chapter 5).

After her research appointment to the Commission, Abbott's activities on behalf of the Wickersham Commission were directly known to Pound and the other commissioners through memos and updates presented to the Commission.<sup>87</sup> Abbott enjoyed relatively wide discretion as supervisor of a major Commission project. Structurally, Abbott occupied a bureaucratic middle-management position -- her lived experience was characterized by entree, instrumentality, and respect, despite her subsequent neglect by Chicago school sociologists.

Abbott was structurally advantaged and she used this position to pursue matters of personal professional interest. Her journal, Social Service Review, was an often critical mirror to the American Journal of Sociology. Her journal was also published on the University of Chicago

campus, but went unrecognized by most sociologists. Her sister, Grace Abbott, was the influential director of the Children's Bureau in the U.S. Department of Labor, and Edith Abbott used the Social Service Review to publish her biographical account of Grace Abbott's work. Edith and Grace Abbott became identified and revered in the American consciousness as "social workers" rather than sociologists, an image the male Chicago school of sociology not only encouraged but derided. More recently, critical scholarly attention (based on examination of the archival record) is being given to the specifically sociological work of Edith Abbott and other women sociologists associated with Jane Addams and Hull-House in Chicago (Deegan 1988c, 1988e).

(iii) Hattie Plum Williams. The former Chair of the Department of Sociology at the University of Nebraska, Hattie Plum Williams, occupied a niche near the bottom of the Commission's hierarchical research bureaucracy. Williams' accomplishments and qualifications, however, were not unlike those of Abbott on many significant dimensions. Williams and Abbott were collegial correspondents and friends.<sup>88</sup> Williams was an accomplished scholar who studied under George Howard, a nationally prominent mentor. Like Abbott, she wrote well-received analyses on immigration and

was a member of learned societies. She too, like Abbott and Pound, was a Phi Beta Kappa from Nebraska.

Unlike Abbott and Pound, however, Williams was a Professor of sociology at the University of Nebraska. Relatively isolated in a comparatively small city on the edge of the Great Plains, her energies and resources were stretched thin. The era of *communitas* on the Nebraska campus had long since passed. Her talents were absorbed by her students, streams of requests for community service, and the bureaucratic demands of the university. She did not hold a position commanding the structural advantages that in other circumstances would have catapulted a woman of her energy and ability into national prominence.

Williams' experience as a participant in the Wickersham investigations was harassed and rigidly structured by others' prior decisions. Unlike the work completed by Pound and Abbott, the task she was hounded to accept lacked creativity and instrumentality. When her male colleagues, Senning and Hertzler, gave her no support, she had no administrative recourse. No doubt Pound would have been dismayed by the lack of cooperation that Williams received in Nebraska (the hard work per se he would have expected, as he demanded it of himself), but he was too far removed in the bureaucratic structure to know the conditions under which this intelligent and diligent Nebraska professor

labored. Had Williams thought to write to Pound rather than to Wickersham to obtain a copy of the report in which her data finally appeared, Pound's record of humane behavior suggests that his response would have been sure, swift, and supportive. Nonetheless, this would not have erased the overall character of her experience as a researcher near the bottom of the academic hierarchy.

Williams' history as a sociologist went unchronicled. Williams, whose professional career centered wholly on sociology, who chaired a major department of sociology, who trained hundreds of graduate students in practical sociology, and who had so much in common with Pound and Abbott, became invisible. Regardless of their excision from the sociological litany, Pound was remembered by law and Abbott by social work. When Williams was not remembered by historians of sociology, there was no alternative structural mechanism that preserved and promoted her pioneering and dedicated contributions to her chosen profession.

State Control and Bureaucratic Intrusion in Research: The Wickersham Commission study on the costs of crime demonstrates the extension of state control and bureaucratic intrusion into research conducted by educational institutions. The purposes of the state were not served unless all of the studies were highly standardized:

From the time that the project for cooperative studies was first conceived it was obvious that such studies would be of substantial value only if made in a way which would insure comparable results. (Simpson, Franzen, and Hubbell 1931: 258).

To insure conformity, the Commission issued a detailed manual of instructions (National Commission on Law Observance and Enforcement 1931a), an explicit model of tables and interpretive format (National Commission on Law Observance and Enforcement 1931b), and a series of instruction circulars updating various details as needed (see appendix to National Commission on Law Observance and Enforcement 1931d: 635-643). By linking this standardized project to graduate thesis research -- as Simpson proposed in order to obtain the unpaid labor of graduate students -- Simpson and not a few professors (many of them sociologists) colluded to strip the graduate research experience of creativity and intellectual integrity in the service of state interests. The complete list of professors and university administrators who presided over this framework for student exploitation is found in an appendix to National Commission on Law Observance and Enforcement (1931d: 489-509).

Williams was not party to this latent, coercive, and exploitative aspect of the program. As early as October,

1930, Williams openly encouraged her students to investigate the costs of crime on their own terms,<sup>89</sup> but she was apparently reluctant to push them into a preordained research design to which students and supervising professors had no input. Although Simpson called his proposal a plan for "cooperative" research, the anticipated cooperation flowed only one way, from the political hinterland to Washington, D.C. Simpson's office was intent only on the collection of predetermined data presented in an inflexible, standardized format. Whereas several students in the sociology department at Nebraska worked on closely related criminological topics during the 1931 spring semester,<sup>90</sup> Williams made no recorded effort to divert these students to the work of the Commission.

The record is not clear concerning the status of the two undergraduates who worked with Williams on her reports. Their abilities (and -- in the crucial case -- lack thereof) were apparently unknown to Williams when she engaged them, suggesting that they were not sociology majors with whom she would have been familiar. It is not known if they were paid for their services. The assistants were more hurdle than help and Williams did not acknowledge their work by name in her final reports or her correspondence. Williams chose not to exploit her regular classrooms and seminars as sources of unpaid labor to further state interests. Her commitment to



the study was made as an individual professional, bolstered by her apparent belief that she was obliged to assist her university respond to a request for "cooperation" from a commission appointed by President Herbert Hoover.

The Sexual Division of Labor: The national scope of the data collection effort masks the unique character of Williams' studies in Lincoln and Omaha. The nation-wide project tapped the resources of one-hundred-eleven research organizations, primarily in universities (See Appendix B in National Commission on Law Observance and Enforcement, 1931d: 484-509). Of the 300 cities studied, a full two-thirds were surveyed by university-based investigators. The majority of the remaining studies were conducted by municipal research bureaus and chambers of commerce (Simpson, Franzen, and Hubbell 1931: 257). This accounting, however, does not reveal the sexual allocation of labor that characterized the data collection process.

Whereas 15 studies were conducted by women under the direction of male supervisors, only three of the 111 research organizations launched studies specifically under the direction and control of women:

(a) In Wisconsin, the study of Milwaukee was made by Paula Lynagh, statistician to the Citizen's Bureau of Milwaukee. She directed a male assistant, E.J. Youngerman

(National Commission on Law Observance and Enforcement 1931d: 509).

(b) In Massachusetts, the studies of Chicopee, Holyoke, and Springfield were supervised by Professor Amy Hewes, Chair of the Department of Economics and Sociology at Mount Holyoke College, and Helen Bonser, an assistant in the department. Dr. Hewes was assisted by 14 additional women, presumably students (National Commission on Law Observance and Enforcement 1931d: 494-495).

(c) And, in Nebraska, the studies of Lincoln and Omaha were completed by Dr. Hattie Plum Williams, Professor of sociology at the University of Nebraska (National Commission on Law Observance and Enforcement 1931d: 498).

Of the three studies directed by women, the Nebraska studies deserve special notice. In the Wisconsin case, the chief investigator was likely a professional statistician instructed by her employers, The Citizen's Bureau of Milwaukee, to undertake the study as part of her regular duties. She was responsible for only a single city and was supplied with an assistant. In the Massachusetts case, Professor Hewes, who was a graduate of the powerful University of Chicago, not only had the assistance of Helen Bonser, but also that of more than a dozen students within the cohesive atmosphere of an elite, highly-respected women's college. As Chair of her department, Hewes had

greater capacity to allocate her time and she commanded the department's clerical resources.

The Nebraska case differs sharply. Williams was a full-time Professor who could not administratively re-structure her time. She was not relieved from her classroom duties (as dean Pound arranged for his colleague, Warner, at Harvard). The University Chancellor and department Chair who "arranged" for the study at Nebraska did not even provide stenographic aid to Williams. She also labored without the support of her male colleague, Professor Senning, who had promised to share the work but never delivered. The only source of "assistance" for Williams was two part-time: two untried undergraduate students, one of whose inept compilation errors only compounded Williams' data collection and editing chores. In short, Williams' studies of Lincoln and Omaha were the only investigations in the nation undertaken, directed, and completed essentially singlehandedly by a woman researcher. This significant accomplishment went unrecognized, unappreciated, and unsupported by her colleagues, her university, and her discipline.

### Lessons

The story of Hattie Plum Williams and the Wickersham studies reveals an interwoven tapestry of bureaucratic

structure, patriarchal norms, empire building by ambitious sociologists, and the intrusion of nation state interests into the institutional heart of higher education. Williams' investigations of the administrative cost of crime in Lincoln and Omaha, Nebraska, are more fully appreciated when seen against this complex tapestry. Her story is simultaneously tragic and admirable. No less prepared for or committed to the sociological study of social issues than Pound or Abbott, Williams' bureaucratic niche restricted her opportunities and limited her resources. Excluded from the self-promoting world of "Chicago school" sociology, she, like many other talented sociologists, had no real chance to make a lasting mark on the atlas of sociological history given the differential allocation of institutional resources within the discipline. Like many women intellectuals, she experienced patriarchal discrimination, but was fortunate that George Howard took an egalitarian interest in her work. That support faded with Howard's death -- it was not institutionalized in a framework of legal-rational norms nor renewed by the bygone spirit of *communitas* at Nebraska. Edith Abbott's work was, by contrast, highly respected by influential men and women outside the tight-knit circle of Chicago school sociology and -- fortunately for Abbott -- her bureaucratic locale insured that her network of admirers was much larger than Williams'.

Within her bureaucratically-structured constraints, however, Williams succeeded where many would have given up. She became a full Professor and department Chair at a major state university. She trained hundreds of graduate students and corresponded with many well-known leaders in sociology and social reform. She held up Nebraska's end of the Wickersham investigations when no one else would take the assignment or help with the work. Indeed, she was the only woman in the nation to direct and conduct municipal cost of crime studies for the Wickersham Commission without substantive assistance. She also stood alone, most likely, in her quiet decision as a professor to serve what she understood to be the interests of her country without at the same time subverting the atmosphere of free inquiry and creativity in which she trained her graduate students. These are values and noteworthy accomplishments that deserve recognition in Weber's rationally-ordered world.

Tracing the parallel experiences of three highly qualified, sociologically-oriented scholars who participated at different hierarchical levels in the Wickersham investigation provides an opportunity to make visible the mechanics of bureaucratically-structured instrumentality and advantage. Cooperation, recognition, and support for one's work in the academic world are tied in part to one's position in the hierarchy. Those at or near the top enjoy

the exercise of instrumentality regardless of the potentially exhausting nature of their work. The footsoldiers in this system, however, must often call upon depleted reserves of courage and perseverance that are not soon or easily replenished. More often than not, the members of the academic proletariat are dedicated, selfless women like Hattie Plum Williams.

### Notes for Chapter Seven

1. Portions of this chapter are forthcoming in a special issue of Mid-American Review of Sociology devoted to the history of sociology at the University of Nebraska (Hill Forthcoming c).

2. Louise Pound, quoted in Alvin Johnson's (1952: 96) autobiography, Pioneer's Progress. Roscoe's sister was a remarkable scholar in her own right as a professor at the University of Nebraska. She was a college friend of Willa Cather and was later a professor to Edith Abbott and Mari Sandoz. Louise Pound had reason to appreciate unsung scholarship inasmuch as her work in literature and her editorship with H.L. Mencken of American Speech went generally unnoticed in the wider Lincoln community until late in her career. Mari Sandoz wrote to her in 1947:

I'm happy to see that Kiwanis decided to honor its organization by awarding you their Distinguished Service Medal. After all your national and international recognition it's nice to see the prophet is also recognized in her own country. (Sandoz to Pound, 25 November 1947, Box 2, Correspondence 1947, Louise Pound Collection, State Archives, Nebraska State Historical Society).

3. Few Chicago scholars take account of the fact that Shaw and McKay's national study on juvenile delinquency appeared as only one part of the National Commission on Law Observance and Enforcement. It should be noted -- as Boostrom and Henderson (1986) allude -- that Shaw and McKay never held positions in the Department of Sociology at the University of Chicago even though the male "Chicago school" claims them. Conversely, Edith Abbott, who was on the sociology faculty, is typically dismissed as not "one of the boys."

While acknowledging on the one hand that Chicago exercised dominant, hegemonic control over the discipline, Boostrom and Henderson (1986), who examine the Sutherland, Shaw, and McKay "foundations" of Chicago school criminology, fail to see -- on the other hand -- that such control creates the subsequent bibliographic evidence on which their study relies. Chicago sociologists were astute promoters of academic products, and Shaw and McKay enjoyed Burgess' avid

sponsorship. In the case at hand, the following steps were taken: (1) Shaw and McKay's delinquency work was quickly divorced in rhetoric and reference from the massive National Commission on Law Observance and Enforcement (or Wickersham Commission) Report -- of which the Shaw and McKay contribution was a relatively small part, (2) Shaw and McKay's delinquency study was published as a separate book by the University of Chicago Press in 1942 (and was revised and reissued as recently as 1972), keeping the volume available in the marketplace and packaging it with no visible links to the larger Wickersham Commission Report of which it was a part, (3) the report was widely distributed -- often gratis to potential contributors -- by Weigel at the Behavior Research Institute, and (4) subsequent scholars, and especially those swept up in the socially constructed bibliographical mystique of the Chicago School, repetitively cite the Shaw and McKay volume as an exemplar, as a pioneering work, as a free-standing volume published under the imprimatur of the University of Chicago Press. This process, in part, created "the fact" that subsequent Chicago criminologists ritually cite Shaw and McKay as criminological pioneers.

4. No other candidate for this distinction has been discovered.

5. My conversations with several sociologists who were trained at the University of Chicago revealed that the "Wickersham Commission" and "Shaw and McKay" were, for them, interchangeable labels. These otherwise astute scholars were surprised to learn that there was "more to" the Wickersham report than the study by Shaw and McKay.

6. Sutherland to Wilcox, 25 May 1931, Box 106 Clair Wilcox File, Records of the National Commission on Law Observance and Enforcement, U.S. National Archives, Washington, D.C. (hereafter, NCLOE).

7. Wilcox to Sutherland, 28 May 1931; Sutherland to Wilcox, 2 June 1931, Box 106, Clair Wilcox file, NCLOE.

8. "Mailing List for the van Kleeck-Winslow-Reid Report," 20 March 1931, Box 102, Clair Wilcox File, NCLOE; "Submit van Kleeck-Winslow-Reid Report for Criticism to . . .," unsigned, undated memo, Box 102, Clair Wilcox File, NCLOE.

9. Weigel to Wilcox, 1 May 1931, Box 102, Clair Wilcox File, NCLOE.



10. Burgess to Pound, 24 May 1930, Box 7, Folder 4, Roscoe Pound Papers, Harvard Law School Library (hereafter, HLSL). Burgess sent Pound copies of Shaw's The Jack-Roller and Delinquency Areas, noting:

It occurred to me that after examining these volumes you might be willing to write us a statement of your reactions to them, especially upon any points of their significance to judges and lawyers.

Burgess attempted to pump Pound for promotional copy! There is no record that Pound replied.

11. Weigel to Wilcox, 1 May 1931, Box 102, Clair Wilcox File, NCLOE.

12. Weigel-Wilcox correspondence, Record Group 10, National Commission on Law Observance and Enforcement, Clair Wilcox File, NCLOE.

13. Weigel to Wilcox, 20 May 1931, Box 102, Clair Wilcox File, NCLOE.

14. Weigel-Wilcox correspondence, Box 102, Clair Wilcox File, NCLOE.

15. For example, see discussion in Chapter 2, notes 29 and 34, this study.

16. Search of the Commission's records at the U.S. National Archives revealed no trace of the Burgess memorandum.

17. Abbott's and van Kleeck's responsibilities are discussed in several places in the minutes and records of the Commission. (See, for example, van Kleeck to Wilcox 25 November 1930, Box 102, Clair Wilcox File, NCLOE; and Abbott to Wilcox 6 December 1930, Box 105, Clair Wilcox File, NCLOE; Memo, "Conference with Dean Abbott," by Clair Wilcox, 22 November 1930, Box 105, Clair Wilcox File, NCLOE).

18. R. Pound to O. Pound, 23 February 1931, Box 1, Folder 5, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society (hereafter, Nathan Roscoe Pound Collection, NSHS).

19. Howard's "history" remained unpublished for many years, see his manuscript, "Sociology in the University of Nebraska," (Department of History, George E. Howard,

Manuscripts, University Archives, University of Nebraska-Lincoln). Williams' husband, a Lincoln attorney, observed in 1921 that university duties at Nebraska kept her from her research for more than six years and that she looked forward to an opportunity to return to it (T.F.A. Williams to Fritzler, 2 July 1921, Box 1, Correspondence 1915-1919, T.F.A. Williams Collection, State Archives, Nebraska State Historical Society). Williams' accession to the chair was not a happy experience, despite Howard's support (see Howard-Williams correspondence Hattie Plum Williams Collection, State Archives, Nebraska State Historical Society). From the time that Williams was hired in 1915, the Department of Sociology at Nebraska never hired another full-time woman faculty member until Lynn White and Mary Jo Deegan were hired in 1974 and 1975 respectively, a period of nearly sixty years. In 1986, Lynn White became the second woman to chair the Department of Sociology at the University of Nebraska.

20. See, for example, Gwendolyn Hughes' letters 1919-1921 to Williams from Bryn Mawr where Hughes studied sociology with Susan Kingsbury after leaving Nebraska (Box 1, Correspondence 1915-1923, Hattie Plum Williams Collection, State Archives, Nebraska State Historical Society, hereafter, H.P. Williams Collection). For an introduction to Kingsbury, see Keith (Forthcoming).

21. The impressive extent to which Williams served community organizations is seen throughout her correspondence (Boxes 1-6, H.P. Williams Collection). For her analysis of the link between the university and the community, see Williams (1919).

22. Williams recounts Howard's encouragement and offer of what would become her first university teaching position in a letter to Catherine Dunn (13 February 1929, Box 2, Correspondence 1929-30, H.P. Williams Collection). Howard's high esteem for Williams' intellectual ability is seen in his letter to Chancellor Avery recommending her immediate appointment to an Associate Professorship (24 June 1915, Chancellors Papers, Samuel Avery, University Archives, University of Nebraska-Lincoln).

23. Bogardus to Williams, 15 June 1918, Box 3, Correspondence 1931-34, H.P. Williams Collection.

24. Howard to Avery, 17 September 1923, Chancellors Papers, Samuel Avery, University Archives, University of Nebraska-Lincoln. Howard's supportive letters to Williams

extend from 1917-1925 (Box 1, Correspondence, 1924-29, H.P. Williams Collection).

25. Simpson to Burnett, 16 October 1930, Box 2, Correspondence 1930-32, H.P. Williams Collection.

26. Ibid.

27. Ibid.

28. Simpson to Hertzler, 3 November 1930, Box 2, Correspondence 1930-32, H.P. Williams Collection.

29. Two-hundred-fifty seminar papers prepared by Williams' graduate students between 1918 and 1942 on a variety of community issues, including twenty-one studies on penology, have been archivally preserved (Boxes 25-47, H.P. Williams Collection).

30. Simpson to Burnett, 16 October 1930, Box 2, Correspondence 1930-32, H.P. Williams Collection.

31. Simpson to Hertzler, 30 December Box 2, Correspondence 1930-32, H.P. Williams Collection.

32. Simpson to Hertzler, 5 January 1931; 21 January 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

33. Simpson to Hertzler, 26 March 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

34. Simpson to Williams, 28 March 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

35. Williams, draft of telegram, apparently to Simpson, 31 March 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

36. "Studies in Penology," 1 April 1931, unsigned memo, Box 2, Correspondence 1930-32, H.P. Williams Collection.

37. Draft of telegram from Williams to Simpson, 18 April 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

38. Draft of telegram from Williams to Simpson, 22 April 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

39. Williams to Simpson, 24 April 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
40. Ibid.
41. Ibid.
42. Ibid.
43. Simpson to Williams, 28 April 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
44. Ibid.
45. Williams to Simpson, 6 May 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
46. Ibid.
47. Ibid.
48. Simpson to Williams, 12 May 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
49. Williams to County Treasurer, 18 May 1931; Williams to Brungardt, 18 May 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
50. Williams to Simpson, 30 May 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
51. Ibid. Williams' unsolicited promise to Simpson to make minor corrections at some future, unspecified time may explain the 1933 date on the surviving typescripts of her reports (Williams 1933a, 1933b). If so, then Williams kept her promise even though the Wickersham Commission was disbanded.
52. Ibid.
53. Simpson to Williams, 2 June 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.
54. Wickersham to Williams, 23 July 1931, Box 3, Correspondence 1931-34, H.P. Williams Collection.
55. Whyte to Williams, 8 June 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

56. Burnett to Williams, 30 March 1931; Williams to Burnett, 3 April 1931, Chancellors Papers, E.A. Burnett, University Archives, University of Nebraska-Lincoln.

These were troubled days in the Department of Sociology at Nebraska. Willard Walter, who had been hired in September 1929, was fired in February 1931, although paid through the end of June (Good, Furstenberg, and Mitchell 1970: 38-39). He was by no means the first nor the last to find Nebraska antithetical to scholarly work:

Waller's dissatisfaction with the intellectual life at Nebraska did impel him to work hard, if only to create for himself opportunities elsewhere. After one year, he had to admit that "... we do not like very many of the Nebraska people and we hate Lincoln." He had decided that going to Nebraska was a mistake. "The University is not even second rate, and the cultural isolation of the place is almost unbelievable." (Goode, Furstenberg, and Mitchell 1970: 36).

Waller was apparently dismissed for counseling a pregnant student without telling the young woman's parents about her condition. Goode, Furstenberg, and Mitchell (1970: 39) note that:

Waller was angry at the town's [Lincoln] prudish response, and at its desire to protect authority instead of catering to human needs, but he was much more hurt by his department head's [Hertzler] failure to come to his defense publicly.

Waller's stay was not a total loss in that much of the case material in his well-known treatise on The Sociology of Teaching came "from his students at Nebraska" (Goode, Furstenberg, and Mitchell 1970: 39).

57. Williams to Wickersham, 3 September 1931, Box 2, Correspondence 1930-32, H.P. Williams Collection.

58. Ibid.

59. Despite an energetic search, no correspondence relevant to this issue could be located in the Hattie Plum Williams Collection at the Nebraska State Historical Society; the University of Nebraska Archives; or the the Records of the

National Commission on Law Observance and Enforcement at the U.S. National Archives, Washington, D.C.

60. Membership data are found in the annual Papers and Proceedings of the American Sociological Society, and in later years, in American Sociological Review, and most recently in the Directory of Members of the American Sociological Society.

61. Minutes of the National Commission on Law Observance and Enforcement, 29 May 1922, Box 1, NCLOE.

62. Pound to Sayre, 16 November 1945, Box 1, Folder 20, Nathan Roscoe Pound Collection, NSHS.

63. Pound to Sayre, 16 November 1945, Box 1, Folder 20, Nathan Roscoe Pound Collection, NSHS.

64. Ibid.

65. See, for example: Memorandum, "List of Committees," 25 July 1929, Box 90, NCLOE.

66. See Pound's Diary for 1931 (Paige Box I, Diaries, Roscoe Pound Papers, HLSL). This was an especially busy and eventful period in Pound's personal life. After his first wife died on October 27, 1928 (Roscoe's birthday), it is likely that Pound accepted appointment to the Wickersham Commission in part to keep himself occupied in a demanding task. He wrote to his sister, Olivia, in late November, "I haven't tried to make any plans. I am drifting along putting up the best bluff I can and keeping busy, which keeps me going" (R. Pound to O. Pound, 28 November 1928, Box 1, Folder 4, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society). During the work of the Commission, Pound courted Lucy Miller and they were married shortly after the Commission closed its doors. Pound's diary entry for the date is typically brief, but ecstatic:

June 30 -- "Got marriage license and was married!  
Got passports, took train to NY."

Pound and his new wife took a honeymoon (and a needed rest for Pound) in Europe.

67. In the introduction to the 1942 version, Burgess (1942: ix) noted, "This work is a magnum opus in criminology," and continued:

The findings of this study establish conclusively a fact of far-reaching significance, namely that the distribution of juvenile delinquents in space and time follows the pattern of the physical structure and of the social organization of the American City.

Noting that juvenile delinquency was highly correlated with a number of socio-economic factors, Burgess (1942: xi) argued, "The common element is social disorganization or the lack of organized community effort to deal with these conditions." This was not news in Chicago, however. Mabel Carter Rhoades (1907:9), for example, in her 1907 Ph.D. dissertation in sociology at the University of Chicago, "A Case Study of Delinquent Boys in the Juvenile Court of Chicago," asserted the desocialization thesis with a good deal less fanfare and self-congratulation. She pointed to the important role of the juvenile's proximate family and to the larger society:

We must recognize the wisdom of those who point out evil tendencies for juvenile delinquency in such things as the prevalence of dishonesty in high places and its advertisement through the sensational press, along with other crime and vice, or perhaps in lack of solid discipline for life in our modern schools with their anxiety to make things interesting and easy for the child, or the still more general desocializing tendencies in the adolescent impulses of even the normal boy.

Burgess, however, concluded that eradicating delinquency hinged on neighborhood organizations and, especially, rehabilitation of the physical housing stock of slum areas. The result of similar logic includes the spectacular failure of such projects as Pruitt-Igoe in St. Louis and the modern horror of Cabrini Green in Chicago.

In 1972, James F. Short (1972: xxvi) edited a revised edition (Shaw and McKay 1972) and continued the Chicago litany:

The book is, indeed, a magnum opus, as subsequent developments have demonstrated. In the quarter of a century since its original publication, little has happened to alter the factual picture presented, and theoretical advances and more recent programs of delinquency control are in

large part extensions or modifications of those suggested here.

Curiously, Short expunged Burgess' original introduction, summarizing it in a few sentences in his own expanded introduction. Short's excision of the first three paragraphs of Shaw and McKay's (1942) preface, however, seriously distorts the historical record. There is no way for the reader of Short's edition to know that Short removed Shaw and McKay's statement on the context in which they saw their work during World War II. In the excised portion of the preface, Shaw and McKay observed that data from England demonstrated an increase in delinquency as the war progressed:

This increase, according to the English authorities, is due to the dislocations incident to shifts in population by evacuation, shelter life, changes in work conditions of parents, and black-outs and to other changes which have disrupted the normal relationships in the family and in the religious, educational, recreational, and cultural institutions of the community. (Shaw and McKay 1942: xv).

Thus, they hypothesized:

It is to be expected, therefore, that an increase in delinquency would take place during a period of great national emergency when rapid social changes occur and the traditional forms of social control are everywhere weakened or destroyed.

And concluded:

In accordance with the findings of the present study it is suggested that efforts to deal with the problem of delinquency should, likewise, take the form of broad programs of community reorganization in which the local citizens, through their collective efforts, seek to provide security, protection, opportunity, and constructive moral values for their children. (Shaw and McKay 1942: xvi).

Broad, cooperative community organization -- and no mention whatever of urban renewal programs -- takes a different road than urban ecological thinking which emphasizes localized rehabilitation of the physical environment.



68. Shaw to Wilcox, 2 May 1931, Box 102, Clair Wilcox File, NCLOE.

69. I was informed at the U.S. National Archives that the original first drafts submitted by special investigators for the Commission have apparently been discarded. All that remain are galley proofs, materials prepared late in the editing process. Likewise, the Wickersham Commission files at the Harvard Law School Library apparently contain no early drafts of the Shaw-McKay study.

70. Pound to Sayre, 16 November 1945, Box 1, Folder 20, Nathan Roscoe Pound Collection, NSHS.

71. R. Pound to Olivia Pound, 11 October 1930, Box 5, Folder 5, Nathan Roscoe Pound Collection, NSHS.

72. R. Pound to O. Pound 29 May 1931, Box 1, Folder 5, Nathan Roscoe Pound Collection, NSHS.

73. R. Pound to O. Pound, 30 September 1931, Box 1, Folder 5, Nathan Roscoe Pound Collection, NSHS.

74. Pound to McCormick, 29 October 1931, Box 211, Folder 1, Roscoe Pound Papers, Harvard Law School Library.

75. Ibid.

76. Weigel to Pound, 19 August 1931, Box 211, Folder 1, Roscoe Pound Papers, Harvard Law School Library.

77. Minutes of the National Commission on Law Observance and Enforcement, 5 February 1930, Box 1, NCLOE.

78. Minutes of the National Commission on Law Observance and Enforcement, 6 and 7 May 1930, Box 1, NCLOE.

79. "Clifford R. Shaw's Study of Delinquency Areas," memo by Clair Wilcox, 21 December 1930, Box 102, Clair Wilcox File, NCLOE.

80. Annotated reprint of Deardorff (1930), Box 102, Clair Wilcox File, NCLOE. Deardorff's (1930) critique considerably predates Lander (1954) which Kurtz (1984: 75) offers as the only major significant challenge to Shaw and McKay's work. Herman Adler, in his study of The Incidence of Delinquency in Berkeley, 1928-1932, noted that:

Dr. Shaw, in his Chicago study, came to the conclusion that the chief characteristic of the delinquency areas in that city was that they were in a state of economic and social transition; that is, in the main they were localities which had been residential, which were in process of invasion by industry or commerce, and which had not yet completed the transition. So far as is observable, this does not apply to the delinquency areas in Berkely (Adler, Cahn, and Stuart 1934: 59, emphasis added).

Adler, who worked as a special investigator on Pound and Frankfurter's Cleveland Survey, also demonstrated careful and appreciative reading of Miriam Van Water's Wickersham Commission report. As to ecological modeling in general, it is instructive that Pound once quipped when dissertating on the growth of Lincoln, Nebraska, "the direction of growth of a city can never be predicted" (R. Pound to O. Pound, 13 November 1953, Box 1, Folder 8, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society).

81. Memo, by Clair Wilcox, 22 November 1930, Box 102, Clair Wilcox File, NCLOE.

82. Clair Wilcox, Memorandum, 21 September 1929, Box 91, NCLOE.

83. Wilcox to Comstock; 6 February 1931; Hooton to Comstock; 3 October 1930; Warner to Comstock 3 October 1930; Box 102, Clair Wilcox File, NCLOE.

84. Pound to Small, 24 June 1925, Box 33, Folder 4, Roscoe Pound Papers, Harvard Law School Library.

85. Pound to Abbott, 20 March 1942, Box 57, Folder 4, Roscoe Pound Papers, Harvard Law School Library.

86. E.A. Ross gradebooks, University Archives, University of Nebraska-Lincoln.

87. See for example, Minutes of the National Commission on Law Observance and Enforcement, 24 July 1929; 6 and 7 May 1930, Box 1, NCLOE.

88. For example, Williams to Abbott, 3 September 1927, Box 1, Correspondence 1926-29, H.P. Williams Collection. Numerous letters (frequently including personal news and/or handwritten postscripts) were exchanged between Abbott and Williams. They frequently discussed candidates for university positions. These letters are found throughout Williams' correspondence during her tenure as Chair of the Department of Sociology at the University of Nebraska (Boxes 1-6, H.P. Williams Collection).

89. Simpson to Hertzler, 3 November 1930, Box 2, Correspondence 1930-32, H.P. Williams Collection.

90. "Studies in Penology," 1 April 1931, unsigned memo, Box 2, Correspondence 1930-32, H.P. Williams Collection.

## CHAPTER EIGHT

SOCIOLOGICAL JURISPRUDENCE AND THE THEORY OF INTERESTS:  
POUND'S INSTITUTIONAL ANALYSIS

My own standpoint is empiricism  
-- reality in experience -- organized by ideas.

-- Roscoe Pound<sup>1</sup>

Introduction

Roscoe Pound's substantive contributions to sociological thought are numerous and insightful. The comprehensive, integrated synthesis and critique of his sociological ideas is a large and important task to which the present study serves merely as introduction. Within the social scientific discipline of jurisprudence per se, Pound was the chief theoretician of "sociological jurisprudence." Yet Pound's work was strongly interdisciplinary, and spoke directly and often to the central concerns of sociology.

Pound conceptualized the difference between sociological jurisprudence, on the one hand, and sociology of law, on the other, as a difference in emphasis and point

of origin. Sociology took the more global perspective on social control, including attention to the full range of mechanisms for maintaining social order (e.g., Ross 1901, 1905, 1908, 1930). Jurisprudence, in Pound's view, was concerned solely with law "in the lawyer's sense," specifically, "the adjustment of relations and ordering of instinct through the systematic application of the force of a politically organized society."<sup>2</sup> Taken in this sense, Pound provided a thoughtful, detailed institutional analysis of law.

In addition to adopting an institutional perspective on the phenomenon of law, Pound insisted that his institutional analyses be grounded in the empirical fullness of juristic practice. These two characteristics of his work, institutional perspective and empiricism, are the keys to understanding Pound's work as specifically sociological. Pound's sociological analysis of law was an ongoing project that spanned his long academic career. His sociological insights are found throughout his massive published corpus, often "hidden" in unexpected places in treatises ostensibly devoted to minor issues of technical interest only to lawyers. Excavating, synthesizing, and critiquing the full range and subtlety of his sociological insight is a future project sufficient to engage the task of many workers for years to come.

In this chapter, Pound's early work on a book project, to have been titled, Sociological Jurisprudence, is recounted in detail. The aborted project was to be a voice in the harmonious chord struck by activist social scientists like Edward A. Ross and Richard T. Ely. The character of Pound's participation in the choir of sociologically-informed social reform changed dramatically, however, as Pound moved from a state university on the Great Plains to the elite halls of Harvard Law School. Pound's work became increasingly scholarly and tightly erudite. The story of how Sociological Jurisprudence came not to be published reveals much about the man as an author and an institutionally-situated intellectual.

Pound's subsequent legal studies took him on a minutely detailed, systematic survey of law as a living social institution. His perspective manifests the qualities that C. Wright Mills (1959) called "the sociological imagination." Careful historical study, comparative analysis of anthropological differences, and critique of the existing legal order marked Pound's institutional analyses of law. Pound's (1924b) Law and Morals, outlined below, provides an introduction to the structure and logic of his sociological perspective. His insistence on grounding institutional analysis on empirical data is further

illustrated below by presenting an outline of his "theory of interests."

### The Abortion of Pound's First Sociological Book

Pound's sociological insights are found throughout his many articles and books. There is, however, no comprehensive, integrated statement of Pound's sociology per se. Pound, who published in sociology journals and in symposia on sociology, never published a full-size monograph directed to a narrowly-framed sociological audience. Pound's closest encounter with writing a specifically sociological book began in 1907 when he undertook to write a book directed not only to intelligent laymen, but also to the growing number of students trained in economics and sociology. His intended monograph, tentatively titled Sociological Jurisprudence, had a ten-year history whose telling reveals much about Pound as an author, teacher, and institutional reformer.

The idea for Sociological Jurisprudence came on the heels of Pound's (1906a) inaugural address as a law professor at the American Bar Association meetings in Minnesota. E.A. Ross congratulated Pound on his resounding call for juridical reform, to which Pound replied, "I am especially pleased by your approval of what I said at St. Paul" and added, "If the law schools insist on standing in

the way as obstructions, probably we should not mourn if they are run over."<sup>3</sup> Given time to reflect, however, Pound wrote to Ross a few weeks later, "It will be necessary to go very slow in the matter of interfering with the attitude of the law schools on these subjects."<sup>4</sup> Pragmatically, he argued:

Above all things, the law schools must have the support of the bar to be effective and if a law school were to incur the suspicion of the bar, a great injury would result which would detract from any possible influence which newer and saner views might otherwise have.<sup>4</sup>

Serious reform in legal education and legal thought was necessary, in Pound's view, but must be accomplished without alienating the larger legal community or destroying the law schools.

As Pound worked from 1907 to 1916 on the manuscript for Sociological Jurisprudence, the tension between social reform and his own understanding of academic legitimacy shaped the evolution of his ideas and the format of their presentation. Pound initially thought that law schools could not be reformed from within. "The only way to reach law-teachers . . . is via the public," he wrote to Ross in November 1907.<sup>6</sup> Thus, Pound conceived a book purposefully designed to instigate social change by reaching directly for the public pulse. He asked Ross' advice as to whether his



planned "inquiry into fundamental legal problems and current controversies as to the administration of justice from the sociological standpoint" would fit in Macmillan's "Citizen's Library," edited by Ross' colleague, Richard T. Ely:<sup>7</sup>

Now it seemed to me that such a book -- written for the public rather than for the profession might have a place in the series -- Citizen's Series, I think it is -- in which your Foundations of Sociology appeared.<sup>8</sup>

Ross replied enthusiastically, "I am delighted to learn how far advanced you are with "Sociological Jurisprudence."<sup>9</sup>

Ross spoke to Ely on Pound's behalf, and reported, "He is much interested, inasmuch as he has read your articles, and is in entire sympathy with your point of view."<sup>10</sup> In a letter to Pound, Ely confirmed Ross' estimate:

I really think that you could find no better avenue for publication. The Citizen's Library has already reached such dimensions, and has been so well received, that a book published in it cannot be ignored. And you know sometimes there are those who want to ignore certain books!<sup>11</sup>

Ely, who was not authorized to commit Macmillan to actual publication, concluded, "I shall, however, be very glad to correspond with you about the book and I hope you will submit it when it is ready."<sup>12</sup> Thus, in December 1907, Pound secured an enthusiastic editor and the highly probable

publication of his work in a widely-read series expressly suited to his reform-oriented purposes.<sup>13</sup>

Pound was possibly taken off-guard by the swiftness of Ross' action and Ely's solicitation. To Ross, he wrote, "I had not intended to trouble you to speak to Doctor Ely."<sup>14</sup> And to Ely he confided, "a great deal remains to be done yet," but agreed to submit the manuscript when it was ready.<sup>15</sup> As to a timetable, he told Ross:

I think it would be better not to attempt to complete the work until next fall. There are a great many points on which it will be necessary to go through the reports in order to get illustrations which will not only be apt but will accurately represent the existing legal situation.<sup>16</sup>

Thus, autumn 1908 became the target date for the draft of Pound's first book from a sociological perspective.

In spring 1908, Ely asked for an outline of the book.<sup>17</sup> Pound's reply in July identifies the book's audience, shows his practical intent for the book, and evidences the first of what became a series of delays. Pound explained that as a result of an accident in autumn 1907:

I was sharply advised at the close of the school year -- about four weeks ago -- to lay off every description of work for a season. Hence I am only just back to work and am sending you at once the sketch referenced to in my letter of 28 May [1908]. I trust it will give the information which Mr. Brett [of Macmillan] desires.

I might say to you in further explanation, that the audience to whom I hope to appeal is the growing body of students trained in economic and sociological thought and intelligent laymen generally who see that our legal system imperfectly performs its functions, but have not the legal training to diagnose the difficulty....

To my mind jurisprudence should exhibit some practical results. To do this, Anglo-American jurists must adopt for a season the Sociological Method. I expect my book to be as practical, in the sense of dealing with the concrete problems of American administration of justice, as I can make it.<sup>18</sup>

The schedule was again revised forward, "I shall not have the MS. completed before the first of January [1909] -- possibly not till 1st April.<sup>19</sup>

Ely reviewed Pound's prospectus in August 1908 and communicated to Pound, "I have now gone over it with a great deal of care and interest and believe that it is going to prove an extremely valuable work and I venture to hope even an epoch making one."<sup>20</sup> In September, Ely told Pound, "I have set my heart upon having this book," and pressed Macmillan to offer Pound a formal contract.<sup>21</sup> Pound reported to Ross in December, "My studies for Sociological Jurisprudence are done. It is taking longer than I planned."<sup>22</sup>

The new year, 1909, began with Ross' continuing encouragement to Pound, "I will bet a million the book will make far more a splash than any law book could have

created."<sup>23</sup> Although Pound neared completion of the manuscript, the upcoming Conference on Criminal Law and Criminology (Chapter 5) absorbed every minute of Pound's free time. Pound assured Ely, "A great many things have intervened to delay [the book] but I am inclined to think it will be all the better for the delay," and predicted a completed draft at the end of summer 1909.<sup>24</sup> With no manuscript in hand, Ely asked for a progress report in October, and added encouragingly, with reference to Pound's book, "I anticipate it is going to accomplish great results."<sup>25</sup>

The 1909 Conference was over, but Pound became entangled in the details of moving from Northwestern to the University of Chicago, selling one house and buying another, and preparing new courses. All this, in Pound's words, "killed practically the whole summer."<sup>26</sup> To Ely, he confided:

I find myself now completely occupied with the teaching of subjects which I have never taught before and it will be some weeks yet before I can get back to my work on Sociological Jurisprudence. There is not very much remaining to be done but I have not been able to get the time anywhere for this little."<sup>27</sup>

The priority that Pound gave to preparation for his teaching duties at the University of Chicago Law School signaled a coming shift in his approach to his projected book.

A full year later, Pound had moved to Harvard, and Ely had obtained a book contract from Macmillan. He sent it to Pound during December 1910 and asked Pound to sign it,<sup>28</sup> but Pound apparently failed to put pen to paper. Ross wrote in February 1911, "Dr. Ely says he has written three times to you and can get no reply."<sup>29</sup> Ross impressed upon Pound the depth of their support and the importance of the book, "Both Ely and I wrote the most forcible letters we could compose and that apparently decided Macmillan's to ask for the book."<sup>30</sup> Ross continued, "I am indifferent whether your book comes out from Macmillan or from some other publisher, but I want it out for it is sorely needed to provide the intellectual backing for our movement."<sup>31</sup> Ross still clearly thought of the book as important to the general project of social reform, a book that would make a public "splash."

Pound, however, again in the midst of preparing new courses at a new school, claimed to have explained to Ely that he was reexamining the book in light of his teaching responsibilities at Harvard. He wrote to Ross:

The question arose at once, ought I not to rewrite my MS. so as to make it available for that course [Theory of Law and Legislation]? If I did so, would the book be suitable for Dr. Ely's series? The rewriting goes on slowly but is making a much better book. What I asked Dr. Ely was, whether the book as I am now making it would not be too large and too much in detail for this series."<sup>32</sup>

Pound sent Ross an excerpt of the rewritten material to review, and noted that he now dealt with many more topics than originally planned. He expressed his indifference to Macmillan as a publisher, "They have published so much errant stuff on Jurisprudence," and his regret at causing unnecessary trouble for Ross and Ely.<sup>33</sup>

Ross was full of praise for the new direction in which Pound took the manuscript. He wrote to Pound in February 1911:

I return herewith the ms. you sent me and am greatly interested to see how tremendously you are developing the subject. The book you will make on this plan will penetrate to the higher regions and be studied in law schools and by jurists, judges, and philosophers of law. So scholarly a work, equipped so elaborately with references and notes will reach fewer outside the legal field, but more inside of it. I presume that such a book will accomplish more rapidly the desired ends than a book smaller and less scholarly."<sup>34</sup>

Simultaneously, Ross concurred with Pound's assessment that Macmillan's Citizen's Library was not the forum for a

specialist work intended primarily for law students. While he admired the new turn taken by Pound, Ross concluded, "In my judgment the book you are writing is not for the "citizen" and does not really fit into "the Citizen Series."<sup>35</sup>

In Pound's view, the institutional ground shifted after 1907, and that contrary to his original assumption, it had been possible to change law teaching from within. In March 1911, the Harvard University Story Professor of Law wrote to Ross:

It seems to me the time for a small book of merely propagandist character on sociological jurisprudence has gone by. The fact is things are moving our way, and are moving our way very rapidly. What is wanted now is not to direct attention to the subject, or urge change in methods of juristic thought, but to put before those who are anxious to be sociological jurists a thorough-going statement of what it is they are seeking to be and to do. A permanent contribution, therefore, is needed today where but three or four years ago a sort of campaign circular was in demand. It is astonishing to see how fast the tide of judicial decision and professional opinion is turning.<sup>36</sup>

Pound now anticipated publishing a book of a very different sort. Later that year, the first of his three installments on the "Scope and Purpose of Sociological Jurisprudence" appeared in the June issue of the Harvard Law Review. There he advised readers in a footnote, "The substance of these

papers will appear in a forthcoming book to be entitled "Sociological Jurisprudence" (Pound 1911-12, I: 591).

Although Ross and Ely no longer sought the book specifically for the Citizen's Library, their interest in Pound's work remained high and it was still anticipated by Ely that Macmillan would publish the book in any event, if Pound would submit the manuscript. Additional sociological interest in the new version of the book came directly from the center of American sociology at Chicago. Albion Small wrote to Pound in April 1912:

I am looking with eagerness for further installments of your book in the [Harvard] Law Review. They have thus far been meat and drink to me and I have unlimited capacity for more.<sup>37</sup>

When the third part appeared, Small wrote that he "devoured" it.<sup>38</sup> In Small, Pound found a colleague who nagged him to complete his first book. In 1914, Small thanked Pound for sending him a reprint, adding:

these side issues are all very well and good, but they do not tend to make me forget that your Magnum opus is due, and as I have been advertising it all over the country, I hope it will materialize before a great while.<sup>39</sup>

In April 1916, Ely wrote to Pound and approached him with plans for another book on jurisprudence while keeping the



door at Macmillan open for Pound's original project, "I should like a book which will not at all anticipate your own book on Sociological Jurisprudence, but rather be preparatory to it."<sup>40</sup> With his first book still incomplete, Pound agreed in principle, and wrote to Ely, "I have a great deal of material for such a book, and think I could put it together pretty rapidly."<sup>41</sup> Pound was already planning future volumes:

I have had it in mind as quick as I get my Sociological Jurisprudence done, which I hope will be before the beginning of the next school year, to write an introduction to the History and System of the Common Law which, I think, would very likely be the sort of book of which you speak.<sup>42</sup>

Projects began to multiply, Ely asked Pound to write yet a third book, A Philosophical Introduction to the Social Sciences.<sup>43</sup>

Pound excused himself by recommending another author,<sup>44</sup> but Ely persisted, "It seems to Professor Ross and myself that you are the one man who ought to write" the book.<sup>45</sup> Pound (now Dean of the Harvard Law School) wrote, "there is nothing I should like better," but added that he would have no time, at least for two years.<sup>46</sup> Ely's dogged determination to have a book from Pound resulted in this proposition from Ely, "If you could have it ready in three

years, I should be very much pleased."<sup>47</sup> Ely's overtures were clear, but they were not answered. And finally, in July 1916, Albion Small promised to write an especially appreciative review of Sociological Jurisprudence if Pound would only finish it.<sup>48</sup> It was not for lack of encouragement that Sociological Jurisprudence failed to appear on booksellers' tables and library shelves as a book.

Pound was an energetic, well-organized, and resourceful man. The usual reasons for failure to produce a planned project do not hold. Various contingencies, including moves and adjustments to three new campuses, did make large demands on his time, yet he was a productive writer. During the 1907-1916 period, he published sixty major articles and another sixty short pieces (cf., Setaro 1942). Had Pound chosen to complete Sociological Jurisprudence, it appears that he could have done the job. It should be noted that it took Pound some time to get his first major book off the ground. After publication of The Spirit of the Common Law in 1921, however, other books came more swiftly. Two books followed in 1922 (Criminal Justice in Cleveland and Introduction to the Philosophy of Law), another in 1923 (Interpretations of Legal History), and a fifth (Law and Morals) in 1924. Following this flurry, he published steadily, including Criminal Justice in America in 1930, and Social Control through Law in 1942. He crowned his writing

career with an authoritative, five-volume retrospective compendium on Jurisprudence in 1959.

Pound's transformation from a young, reform-motivated, would-be author of Sociological Jurisprudence to a more studied, master of the academic treatise parallels his changing location in the organizational structure of the institution of law. Pound's penchant for scholarly detail is evident in his University Studies monograph in 1904, but his analysis there led him to a cause celebre, specifically: the critique and reform of legal education and the judiciary. Pound was intellectually and politically ready to "make a splash" as Ross had done. When Pound left Nebraska, however, he was drawn structurally into the privileged, powerful world of elite, private law schools. His scholarship continued and was sharpened through his teaching. He soon lost all drive to publish a "small book of merely propagandist character," and turned his full energies to "legitimate" scholarship instead. To instrumentally advance his vision of reform, Pound took not to the Chautauqua circuit or popular magazines, but to the classroom, the seminar, the professional journal, and the polished, erudite lecture. The original plan of Sociological Jurisprudence, born of Pound's bold challenge to the legal profession, was no longer entertained after Pound accepted a professorship at Harvard.

### Institutional Analysis of Law

This section outlines the central features of Pound's institutional analysis of law. It is properly called sociological because (1) it consciously appropriates sociological insights in its formulation; (2) it adopted an institutional perspective, and (3) it is undertaken as a practical framework for organizing social effort along empirical, scientific lines. Pound worked out the details of his theory of law between 1904 to 1959 in a long series of closely related articles and books in which he charted the historic evolution of inconsistencies, contradictions, and limitations in the institution of law.

Readers new to Pound's expository style quickly discover repetitions of three strategies of exegesis. First, in virtually every study, Pound adopts an historical perspective, recounting (often in elaborate detail) the precedents leading to a conclusion or analysis of current affairs. Wigdor (1974: 285) quotes Harold Laski to the effect that Pound "believes in the natural right of every German to be quoted." And, further, facetiously, that:

If in an essay on jurisprudence, "Pound found it necessary to say that the bathroom had made large developments in America he would put in references (a) to the Sanitary News (b) to the Plumbers Journal and (c) to the Commerce Department's report on the increased manufacture of lead-less glaze together with a note to the

effect that there was a Czech thesis on the sociological significance of the American bathroom which he had not seen."

The point is well taken that Pound was a master of minute details, but he marshalled them as data which he then wove into an empirically-grounded institutional analysis of law.

Second, Pound invariably supplemented the historical turn with a comparative approach, often cross-cultural, comparing and contrasting earlier epochs with more recent developments and/or noting the similarities and differences between specified aspects of law, philosophy, or society within a given historical period. Third, Pound marshaled his historical and comparative data to critique the present state of law and proposed an alternative future for judicial practice. Taken together, these are the three central elements in what Mills (1959), and more recently, Anthony Giddens (1987b), call a "sociological imagination."

Pound was frequently given to classification, utilizing temporal, spatial, logical, or other criteria to demarcate conceptual boundaries between phenomena which could then be treated historically and comparatively. The logic of classification (Pound 1924a) and the intricacies of nomenclature were guiding interests in his work. Pound's classificatory turn often took the form of what he called a "census" of types or characteristics (illustrated below by

his survey of "interests"). Typically, Pound filled his published works with systematic and comprehensive enumerations of the distinctive features of phenomena within each category he defined. His adherence to this format bordered on the liturgical. Below, an outline of Pound's (1924b) Law and Morals provides a representative introduction to his empirically-grounded historical-comparative-critical approach.

#### Searching for Pound's Theory

As a consequence of his repeated tripartite expository strategy, Pound devoted relatively less space in any given work to the advertised topic per se compared to what the modern reader, given the title of an article or book, might expect to see covered with greater specificity. Before arriving finally at the announced topic of a discussion, Pound painstakingly detailed the historical and comparative aspects of his chosen phenomena between and within temporal periods and classificatory categories with such minute care that he often left himself little room to comment on the present situation or condition of the phenomena under discussion. For Pound, however, excavating the historical and comparative context of phenomena was a large and central part of the process of understanding them. Once understood in an historical-comparative framework, Pound's critique and

remedy of a given issue followed directly and succinctly. In adopting an historical-comparative perspective in sociology, Pound joined a distinguished sociological tradition and placed himself in the intellectual company of Max Weber, W.E.B. DuBois, George E. Howard, George Herbert Mead, and, more recently, Anthony Giddens and Theta Skocpol.

Pound demanded that assessment of current situations be thoroughly grounded in competent historical and comparative study. Rather than "wipe the slate clean" as an approach to social problems, Pound insisted on thorough study so that each problem could be seen in its full historic and social complexity. Modern social problems in urban, industrialized societies are not often subject to "simple" solutions, and failure to recognize this leads, more often than not in Pound's estimate, to wrongheaded, wasteful, and counter-productive expenditures of social resources. Hasty "special interest" legislation that remedies one situation while ignorantly creating another earned Pound's special condemnation. He took the position that meaningful solutions to modern social problems call for careful, incremental adjustments of social machinery (Pound 1912, 1913b, 1917). These adjustments cannot be effectively proposed or efficiently accomplished without the knowledge born of comprehensive investigation, analysis, and an accurate census of the contending interests having

legitimate stakes in the resolution of a given social problem.

Modern sociological readers who explore Pound's works in search of "his theory" meet an unexpected challenge. They must understand that for Pound -- and for most sociologists prior to World War I (Deegan 1988c) -- the purpose of empirical research and scientific theory was pragmatic application. Although Pound clearly supported the advance of "pure" science, he did not promote theory for its own sake alone. Pound did not write for the American Journal of Sociology to provide abstract enjoyment for other sociologists. Pound's theoretical work was not intended to collect dust, but to guide the concrete resolution of increasingly complex social conflicts.

Compared to abstracted theorizing intended primarily for ivory tower consumption, Pound's work was spread on the pages of journals whose readers sought workable, pragmatic ideas to use in their professional lives as lawyers, social workers, judges, legislators, criminologists, and sociologists. Pound carefully steeped his analyses in the empiricism of history and systematic comparison lest his assumptions and conclusions fly too far from social realities and institutional contingencies. Given this understanding, the modern reader better appreciates the reasons for Pound's systematic inventories of social thought



and institutional precedent, and can thereby come to comprehend a very different way of "doing" theory in sociology.

Pound's reasoned explications and programmatic discussions of sociological jurisprudence revolutionized the concept of law in the United States. Most of Pound's publications contribute in some way to the development and elaboration of sociological jurisprudence. This line began with his "A New School of Jurists" (Pound 1904), written at the University of Nebraska. This was soon followed by his landmark address to the American Bar Association on "The Causes of Popular Dissatisfaction with the Administration of Justice" (Pound 1906a). He quickly expanded his critique in an article on "The Need of a Sociological Jurisprudence" for the Green Bag (Pound 1907b). Pound's foundational statement, titled "The Scope and Purpose of Sociological Jurisprudence" appeared in three installments in the Harvard Law Review (Pound 1911-1912). In numerous revisions and refinements (for complete list, see Setaro 1942; and Strait 1960), Pound worked steadily toward his massive, technical, five-volume statement on Jurisprudence (Pound 1959). Midway in his march to comprehensive erudition, he wrote Law and Morals (Pound 1924b), a book that well illustrates the sociological character of his maturing institutional analysis.

The institutional "theory of law" that Pound unfolded across the span of several years and numerous studies accomplished much of particular interest to sociology, including the following: (1) it articulates the relationship of law to other institutionalized structures of social control (such as family, religion, and education) during periods of social change in urban, industrial societies; (2) it provides an overarching perspective (called "sociological jurisprudence") for reconstituting the institution of law per se to meet the needs of urban, industrial society (and this perspective is built directly on theoretically-framed input from sociology and requires sociologically-generated data for its operation); (3) it proposes a pragmatic model of social relations between individuals as well as groups (a theory of "social interests"); and (4) it mandates socially responsive empirical research and calls for interdisciplinary "team work" among the social sciences (in which he included the science of law). There is undoubtedly much more in Pound's work of profitable interest to jurists and philosophers of law, but this list highlights the points of particular concern to sociologists.

Pound's Institutional Analysis of Law and Morals

Law and Morals (Pound 1924b) illustrates Pound's classificatory approach to theory. Here, Pound classified the major streams in legal philosophy and explicated the consequences of their application for the operation of day-to-day legal decision-making. He demonstrated his historical-comparative method in a detailed exposition and critique of the relationship between law and ethics as posited by adherents of three major predecessors to sociological jurisprudence: the historical, analytical, and philosophical views. (Although not pursued here, the parallel to Jessie Taft's (1915/1987) analysis of the three-stage development of "social consciousness" is striking (see also Deegan Forthcoming d)). Concentrating on the systematic presentation of his data, Pound left the methodological structure of his institutional analysis implicit rather than explicit.

Law and Morals is not the abstract excursion in philosophy of law that it might first appear to be. Instead, it is an astute empirical analysis of a living social institution. Pound studied the law as it was reflected in the decisions and rulings made by judges in courtrooms. Simultaneously, he understood those decisions to be embedded in institutionalized precedents and tradition. Thus, Pound appropriated the operative

philosophies of law (i.e., the analytical, historical and philosophical) as empirical data for analysis. He traced the historical record of these philosophies, not as abstract logical systems, but as the institutionalized metatheories of everyday legal decision-making.

Pound's principal conclusions are straightforward. In summary, he wrote:

If we said that to the analytical jurist law was law by enactment, that to the historical jurist it was law by convention, and that to the philosophical jurist it was law by nature, we should do the cardinal juristic doctrines of the last century no injustice. . . . (Pound 1924b: 110).

He sketched his critique as follows:

The philosophical jurist was too prone to find ingenious philosophical justification for rules and doctrines and institutions which had outlived the conditions for which they arose and had ceased to yield just results. The historical jurist was too prone to find a justification for an arbitrary rule in the fact that it was the culmination of a historical development. The analytical jurist banished all ethical considerations, all criticisms of legal precepts with reference to morals, from the law books. (Pound 1924b: 81).

Explicating the methodological steps leading to these conclusions and critiques reveals Pound's facility as an analyst of social institutions.

Methodologically, Pound systematically tested previous theoretical delimitations of legal and moral institutions against the empirical reality of "law in action" in everyday legal practice (cf., Pound 1910a). Pound, unlike Karl Popper, did not abandon or consider prior systems of theoretical propositions totally falsified when empirical counter-factuals were discovered. Instead, Pound surgically distinguished what he thought to be the weak and strong points of prior theories. He asked how each philosophy functioned as a guide to decision-making in actual cases, and with what result. Pragmatically, he retained empirically plausible concepts while simultaneously repudiating ideas ill-fitted to the facts of everyday reality.

Pound fastened his analysis in Law and Morals to several presuppositions, most of which he offered unexamined as conditions of his discussion. These are the metatheoretical presuppositions of his theory. Ideals of reason, progress, science, pragmatism, and justice permeate his analysis. Law is taken as central. He does not, for example, frame his analysis on a survey of schools of ethics (as one might, given the topic of "morals"). Nonetheless, he is not narrowly juridical. The reasonableness of a catholic approach to social scientific thought is a fully argued assumption.

His analysis makes a doubly insightful institutional point. Not only is the relationship between morals and law multi-faceted, but law is also complexly linked to other significant institutional spheres, including the social sciences. Pound staunchly advocated interdisciplinary cooperation:

All the social sciences must be co-workers, and emphatically co-workers with jurisprudence. When we set off a bit of social control and define its bounds by analytical criteria and essay to study it by its own light and with its own materials and its own methods exclusively, our results, however logical in appearance, are as arbitrary and as futile for any but theoretical purposes, as the division of the body of the defaulting debtor among his co-creditors in primitive law. (Pound 1924b: 115).

For Pound, the very nature of law was incomprehensible without continually making "deep incursions" from each social science into its cognates (Pound 1924b: 115). Pound thus framed his understanding of law more broadly than did his predecessors in American jurisprudence, grounding his analysis in law and sociology.

Pound cautioned readers that "law" and "morals" are not straightforward concepts. He noted that much philosophical discussion of the relationship of law to morals was founded on German scholarship in which the German terms Recht and Sitte are not precisely equivalent to "law" and "morals" as

generally understood in English. Recht encompasses the ideas of:

"right and law" -- the law looked at not merely as courts enforce it, but also with reference to what the courts are seeking to attain through the judicial administration of justice. (Pound 1924b: 84-85).

And:

Sitte means more than morals in the sense in which we commonly use the term. It implies habits of mind -- those principles of conduct in civilized society which have become second nature and of which we are not always conscious. It might be called ethical custom. (Pound 1924b: 85).

Pound frequently used "law" and "morals" throughout his book in ways that approach the German terms of Recht and Sitte. The idea of "morals" as "ethical customs" echoes the concept of "normative behavior" and moved Pound's analysis beyond a narrowly legalistic discussion. "Morals" viewed as "ethical customs" attain institutional stature.

Questions of institutional definition and the boundary between law and morals form the substance of Pound's sociologically-informed critique of earlier juridical conceptions of law. Three questions are central. (1) Are law and morals identical or equivalent? (2) Are they completely separate? (3) Is one wholly or partially

subsumed under the other? Pound found none of the traditional answers wholly satisfactory in the empirical world of practicing courts and lawyers, yet he recognized cogent points in each prior perspective.

The historical school explained law as the culmination of past convention. Pound agreed to the extent that law evolved from primeval social epochs wherein law and morality were institutionally undifferentiated. He held that law in modern societies became an important component of overall social morality, convention, and control. "Today," he wrote, "the legal order is the most conspicuous and most effective form of social control" (Pound 1924b: 25). Indeed, he observed that "law is one of the most fundamental [social institutions]" (Pound 1924b: 73). Pound respected the institutional tradition of law. To totally ignore the historical development of law threatened what Pound called "institutional waste" (Pound 1924b: 91). Nonetheless, he cautioned that singling out the demonstrable historical origin of modern laws as the sole justification for maintaining traditional rules and legal practices leads inevitably to injustice because historical precepts do not always work in modern circumstances.

Pound further identified areas of social control in which law is only presently unfit, such as enforcement of moral obligations in arenas where legally demonstrable proof



of moral failure is presently impossible or difficult to develop legally (Pound 1924b: 74-75). Pound argued that courts must remain open to advances in scientific knowledge. The jurist, wrote Pound, "should not assume too lightly that with progress in science and improved legal machinery the law will forever remain unable to do what it has been unable to do in the past" (Pound 1924b: 75). Whereas law, morals, and traditional customs are related and often share historical roots they are neither identical nor equivalent. There are many issues, in Pound's view, that society must trust to morals rather than law, and there are points of departure from which advancement of law should not be barred by reason of legal inertia or slavishness to historical arguments.

The analytical school of jurisprudence held that law and morals were entirely separate enterprises, and hence that law could be studied totally from within its own internal system of logic. Pound identified areas of law in which the moral dimension does fail to enter, as in establishing whether a contract should be witnessed by one, two, three, or some other number of persons. The exact number of witnesses, Pound argued, is a procedural question interior to law itself. For example, a contract is not more or less moral as a consequence of the number of persons who witness its execution. To seek moral meaning in something

as ethically arbitrary as the number of legally required witnesses would be wrongheaded. In this and similar instances, law and morals are analytically separate. It should be noted, too, that as a young lawyer, before his introduction to sociology, Pound wrote that he "still held to the orthodox English analytical jurisprudence, with some reservations and some concessions" (Pound 1937: 1). He had moved well beyond the analytical position by the time he wrote Law and Morals.

Pound argued that the application of law is not a mechanical or purely analytical process. Application -- the law in action -- is guided in subtle ways by moral notions, for example in instances where the law allows sentencing discretion in criminal cases (Pound 1924b: 58), where it invites individualized determination of damages in civil suits (Pound 1924b: 71), and where jurists are procedurally free to choose among numerous analogies and "competing modes of analogical development" when formulating judicial opinions (Pound 1924b: 61-62). While some aspects of law and morals are analytically separate, they are clearly not completely so.

The philosophical jurists, according to Pound, assumed a primitive, undifferentiated concept of "society" in which they found "universal" or "natural" principles on which legislation and court procedure are inexorably and logically

based. Law in such a scheme is subsumed under prior, universal principles of ethics. But Pound, arguing from empirical data rather than theoretical assumptions, noted the reality of a heterogeneous, urbanizing world not at all equivalent to the primitive, undifferentiated notion of society assumed by the philosophical school. He concluded that whereas law is a creation of society, and thus subsumed under more comprehensive conceptions of social custom, law is not the logically consistent or principled creation envisioned by philosophical proponents of natural law theories of jurisprudence. Pound observed that the philosophical view would pit each group in society against each other, arguing that its own ethical system was "fundamental" and should be imposed on all others. Pragmatically, Pound concluded, there is no reasonable way to derive universal and fundamental principles from the reality of a heterogeneous society.

Nor can the philosophical jurist work in reverse. In general," Pound wrote, it is true that "law cannot depart far from ethical custom nor lag far behind it" (Pound 1924b: 114). At the same time, however, the law per se is not a logical, coherent source of universal ethical maxims. In everyday practice, legal precepts are, rather, "the technical, scientific custom of the courts and lawyers" (Pound 1924b: 114). Further, modern law inherited

procedures and practices from myriad, often logically incompatible historical sources. One cannot, therefore, take the law in action and deduce from it a set of original universal principles.

Pound unearthed deficiencies in all three juridical perspectives on law and morals: the historical, analytic, and philosophical. Yet, positive, empirically and logically resonant aspects of each view influenced his own, developing ideas about law. He conceptualized the institutional relationship of law and morals as a complex, sometimes logical, sometimes moral, sometimes technical, historically-rooted field of active play in a changing, heterogeneous, urbanizing world. This view was informed by empirical considerations and interdisciplinary insight.

Pound's methodological logic built a more broadly empirical and sociological foundation for legal studies, but his view of social science allowed no quarter for architects of mechanistically deductive systems of sociological "laws". Pound rejected a priori natural-law philosophy and its unfulfilled promise of predictable, logically-systematic conceptions of law and morals, observing:

The philosopher sought to find a foundation for assured security of the social order through the analogy of the constancy and universality of the everyday phenomena of physical nature, exactly as the positivist sociologists today seek to find general laws of social phenomena of the same

sort, and to be discovered in the same way, as the laws of physics or astronomy. (Pound 1924b: 5-6).

In discarding the view that modern law is always analytically, historically, or philosophically consistent, Pound also jettisoned "the endeavor of mechanical sociologists to put the matter wholly in terms of ethical custom" (Pound 1924b: 110). He recognized the pragmatic utility of sociological insight for informing legal practice, but the former botanist refused to adopt a scientistic, natural science model of sociological practice.

A more responsive and less dogmatic sociology informed Pound's analysis and his prescriptive view of the future relation between law, morals, and society:

Jurists are becoming more confident of the efficacy of intelligent effort to improve the law. Already there is a revival of natural law -- not of the natural law that would have imposed upon us an idealized version of the law of the past as something from which we might never escape, but of a creative natural law that would enable us to make of our received legal materials, as systematized by the legal science of the last century, a living instrument of justice in the society of today and of tomorrow. Such a natural law will not call upon us to turn treaties on ethics or economics or sociology directly into institutes of law. But it will not be content with a legal science that refuses to look beyond or behind formal legal precepts and so misses more than half of what goes to make up the law. (Pound 1924b: 82-83).

Pound thus moved beyond a discipline-bound, solely juridical consideration of the relationship between law and morals. He opened his project to include lived tradition, everyday contingencies, and extraordinary social change. The institutional study of law looked not only to law but also to ethics, economics, politics, sociology, and their mutual interrelationships. By stepping outside jurisprudence -- to simultaneously embrace sister social scientific disciplines -- Pound saw the institutional patterns and possibilities of law in a new and creative light that transformed American jurisprudence not only in theory but also in practice.

#### A Theory of Interests

The keystone of Pound's pragmatic sociological analysis of the institution of law is his "theory of interests" (Pound 1915a, 1916b, 1920b, 1930b, 1943b, 1945a, 1945b). Geis (1964: 275) attributes Albion Small's concern with the classification of human interests in his 1905 General Sociology as a forerunner to and influence on Pound's later work. Pound's studies of "interests of personality" (Pound 1915a) and "individual interests in the domestic relations" (Pound 1916b) appeared shortly after Pound wrote a paper at Ross' request for the 1914 meetings of the American Sociological Society. The paper Pound prepared was never presented (Chapter 5), but in it Pound tried to "get hold of

the social and individual interests involved" in the issues surrounding freedom of speech.<sup>49</sup>

In 1919, however, Pound was again invited to give the keynote address at the meetings of the American Sociological Society and the result was Pound's (1920b) foundational, "A Theory of Social Interests." Pound (1911-1912) earlier called for the application of sociological methods to better understand the operation of law. Through his empirical surveys of the criminal justice systems in Cleveland and China, Pound demonstrated his ability to orchestrate the methodologies typically attributed to sociologists. In the "theory of interests," however, Pound called for empirical study of institutional traits rather than empirical investigation of organizational characteristics in the field.

Pound's institutional analysis and critique of law led him to conclude that the social function of the court was the adjustment of competing interests brought before it through the processes of civil litigation and criminal prosecution. The crux of Pound's critique hinged on his observation that modern urban society placed increasingly higher value on the security of social interests whereas turn-of-the-century jurists continued to value individual rights as preeminent. Pound's "theory of interests" held simply that what formerly were thought to be "individual

rights" were in fact more usefully considered as a special instance of "social interests." Arguing in terms of maximum benefit to the social system with least sacrifice to its members, Pound held that the social interest was often but not always served by securing what the lay scholar, politician, and conservative jurist conceived of as inalienable personal "rights."

Using anthropological data, Pound argued that individual "rights" are a recent "invention" having no "natural" or foundational claim in primitive society. Pound (1920b: 24) concluded: "It is not too much to say that law arose and primitive law existed simply to maintain one narrow phase of this interest -- the social interest in peace and order." Pound had no patience for jurists who stubbornly argued that individuals had always had "rights." The anthropological data convinced Pound of the opposite conclusion. The adjustment of interests moved toward the cooperative resolution of competing wants in place of zero-sum battles to establish the supremacy of one "right" over another.

Given the conception of "interest" rather than "right," Pound asked, "What interests ought to be secured by the law?" Pound was early convinced that the social sciences (social psychology, in particular) should someday be able to



scientifically identify and classify human interests. He wrote (1920b: 31):

There is an obvious relation between what we call interests, and have been wont to call natural rights or public policies, and the instincts or fundamental tendencies or predispositions there set forth [by social psychology].

But Pound was pragmatic concerning the immediate ability of the social sciences to provide the data needed for a definitive classification of social interests:

It seems futile for the jurist to attempt to work out and classify social interests on this basis when sociologists are not yet ready to treat social forces in this manner, nor are psychologists so far agreed about the fundamental instincts and tendencies as to afford an assured foundation. (Pound 1920b: 31).

If sociology and psychology could not help at present, however, Pound did not feel constrained to wait for them.

Ever the empiricist, Pound suggested that a sound start on a classification of interests was close at hand. He argued (Pound 1920: 33-34):

Legal phenomena are social phenomena. Observation and study of them as such may well bear fruit for social science in general as well as for jurisprudence in particular. Why should not the lawyer make a survey of legal systems in order to ascertain just what claims or wants or

demands have pressed or are now pressing for recognition and satisfaction and how far they have been or are recognized or secured?

The logic of Pound's survey required a major (and to Pound reasonable) assumption, specifically, that "social interest appears in many legal institutions" (Pound 1920b: 33). That is, generalized social interests are reflected in the day-to-day decision-making activities of the judiciary.

Given this assumption, and his admiration for the empiricist techniques of sociology, Pound (1920b: 33) moved directly and easily to an empirical investigation:

The first step in such a program is a mere survey of the legal order and inventory of the social interests of which the law has taken account.

Thus, the living tissues of the law, as reflected in myriad court rulings and judicial "logic in use," were data that Pound appropriated for his study of interests. Not all jurists were as sanguine about whether social interests could ever be identified (cf. Kocourek 1917), but Pound was undaunted.

The results of Pound's survey of interests are outlined in Figure 8.1. His examination of extant court cases and operative legal philosophies led him to posit that three types of interests are secured in actual court

decisions: individual, public, and social. By "individual," Pound included those interests typically thought of as "natural rights," such as freedom of personal movement and ownership of property. These, however, Pound concluded could easily be seen as social interests since society has a stake in securing the property and personalities of its individual members. Second, Pound identified "public" interests, those that attach to the state in its role as a corporate entity. Here again Pound found that the most basic interest of the state is to attain the means necessary to secure the various social interests. Finally, Pound presented a detailed inventory of "social" interests.

The purpose of law in Pound's scheme was not the protection of individual "rights" against the public powers of the state, but the security of a wide range of social interests for the benefit of the society as a whole. Given an empirically-derived classification of social interests, a jurist could more easily identify the interests at issue in any given court case. Thus, the adjustment of the social interests represented in a given case could become manifest.

Pound also concluded that there are some interests, such as "happiness" and the like, that ought possibly to be secured but that the law is inadequate to the task. Other interests are emergent, such as an "aesthetic" interest in

**Figure 8.1: Pound's Classification of Interests<sup>(1)</sup>**

**I. PUBLIC INTERESTS<sup>(2)</sup>**

**A. The State as a Juristic Person**

1. Personality
  - a. Security of Political Organization
  - b. Functioning of Governmental Machinery
  - c. Dignity of the Political Organization

2. Substance

**B. Guardian of Social Interests**

**II. INDIVIDUAL INTERESTS**

**A. Personality<sup>(3)</sup>**

1. Physical
2. Spiritual

**B. Domestic<sup>(4)</sup>**

1. Parental
  - a. Services of Children
  - b. Social Pleasures Administered by Children
  - c. Chastity of Female Child
2. Filial
  - a. Support during Infancy
  - b. Education and Training
  - c. Indigent Maintenance
3. Marital (Husband)
  - a. Wife's Society
  - b. Wife's Affection
  - c. Wife's Chastity
  - d. Wife's Services
4. Marital (Wife)
  - a. Husband's Society
  - b. Husband's Affection
  - c. Husband's Chastity
  - d. Economic Advantage

**C. Substance (Promised Advantages)<sup>(5)</sup>**

**Figure 8.1 (Continued)****III. SOCIAL INTERESTS(6)****A. General Security**

1. General Safety
2. General Health
3. Peace and Public Order
4. Acquisitions
5. Transactions

**B. Security of Social Institutions**

1. Domestic
2. Religious
3. Political
4. Economic

**C. General Morality****D. Conservation of Social Resources****E. General Progress****F. Individual Life**

1. Individual Self Assertion
  - a. Physical
  - b. Mental
  - c. Economic
2. Individual Opportunity
3. Minimum Human Life

**References:** (1) Pound 1920b, 1943b; (2) Pound 1945a;  
(3) Pound 1916b; (4) Pound 1915a; (5) Pound 1945b;  
(6) Pound 1920b, 1930b, 1943b.

securing less ugly urban environments. He argued firmly, however, that "class" interests are not given security by the courts (Pound 1958).

Pound concluded that law often needs the coordinated support of other institutional spheres. Thus, he saw socialwork, the schools, churches, family, etc. as vitally important to the maintenance of social order and the security of social interests (e.g., Pound 1912, 1923b, 1931c). Law, however, was the chief institutional mechanism for the adjustment of social interests and thus has a special burden. Pound literally considered the law as a mechanism for "social engineering" (Pound 1917), for making socially satisfactory adjustments among the various social interests that found their way into the courtroom asking to be heard.

Pound's classification of social interests suggests a series of continuing research questions. What new interests have been recognized by the courts? Is the sample of cases that Pound examined representative of the universe of legally recognized interests? How can one better identify social interests that have not yet been legitimated by court rulings? To what extent are the interests in Pound's classification the manifestation of class, patriarchal, or hegemonic interests? To what extent do the interests he identified constitute the core social interests of

particular societies or cultures? In what ways do the logics of classification per se affect the identification and arrangement of categories of interests? How can a jurist better identify the inclusive interests that present themselves for adjustment in a given case? As empirically-framed questions for further research, Pound would no doubt welcome modern-day investigations and critiques of his initial classification of interests.

### Conclusion

This chapter briefly introduced the sociological import of Pound's empirical studies of a major social institution. His work draws needed attention to a significant institutional arena that is inadequately studied in American sociology. His work firmly established from the point of view of jurisprudence the premise that law is a social creation, and thus subject to and produced by the social processes studied by sociologists. That Pound did so in the first decade of the twentieth century is remarkable, especially given the tenacity with which the legal fraternity clung to the notion of natural rights and abstract analytical purity. By contrast, for example, sociological analyses and institutional critiques (e.g., Janet Wolff 1981; Becker 1982) of individualist theories of

artistic creativity are still actively resisted within the institution of art.

The material presented in this study clearly documents that Roscoe Pound was a sociologist. To the degree that his sociological insight and professional activity profoundly altered the institutional structure of American law and modern judicial practice, he is properly seen as a major sociologist, and should be so cited in future textbooks and disciplinary histories. With time, Pound may be further recognized as one of the great founders of sociological thought.

To my mind, the identification of sociological giants involves the expectation that successful candidates must contribute significantly not only to positive social change but also to the ongoing intellectual resources of the discipline. If one measures the latter by citations and footnotes in sociology journals, Pound's apparent disciplinary marginality is striking. But, citation studies are indicators of professional networks rather than measures of the inherent intellectual worth and viability of a given theorist's ideas. If we judge Pound's sociological contributions by the continuing force and modern relevance of his ideas per se, then the jury is still out. Indeed, the jury has only been empaneled and has here heard only the opening argument of the case. The issue to my mind is not



that Pound is infrequently cited at present, but whether this will change positively in the future. At the least, there is sufficient reason to prosecute the case, to move forward in future studies toward a detailed and comprehensive evaluation of Pound's intellectual ideas in relation to sociology as a whole and to sociology of law in particular.

Notes for Chapter Eight

1. Lecture Notes, Introduction to the Sociology of Law (Soc 2), circa 1942-46, Box 83, Folder 5, Roscoe Pound Papers, Harvard Law School Library.
2. Ibid. In his article on "Sociology of Law" (Pound 1945: 300) he defines "law" more simply as "social control through the systematic application of the force of politically organized society."
3. Pound to Ross, 2 November 1906, Box 3, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin.
4. Pound to Ross, 28 November 1906, Box 3, Folder 4, E.A. Ross Papers, State Historical Society of Wisconsin.
5. Ibid.
6. Pound to Ross, 16 November 1907, Box 4, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin.
7. Weinberg (1972: 236) reports the following insight on Ely as an editor:

"I wish to call your attention very earnestly as a friend and editor to the question of style," Richard T. Ely wrote to Ross. "My first piece of advice to you is to prune; my second, to prune; and my third, to prune."
8. Ibid.
9. Ross to Pound, 3 December 1907, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.
10. Ibid.
11. Ely to Pound, 4 December 1907, Box 36, Folder 9, Richard T. Ely Papers, State Historical Society of Wisconsin.
12. Ibid.
13. Macmillan's Citizen's Library of Economics, Politics, and Sociology published influential, widely-read books for a well-educated and thoughtful public as well as specialists

in sociology. There is no close equivalent in today's commercial book market, which I think says at least as much about the market as it does about modern publishers. Ross' Foundations of Sociology, for example, was a scholarly treatise based on Ross' work at the University of Nebraska and published originally in the American Journal of Sociology (Weinberg 1972; Keith Forthcoming). The series also included Ross' Social Control, Jane Addams' Democracy and Social Ethics, Frank Blackmar's Elements of Sociology, and many similar works. Pound's later attribution of Sociological Jurisprudence, which was to appear in the series, as "a small book of merely propagandist character" strikes a sharp blow by association at the other titles in the Citizen's Library. One can only wonder what Ross may have thought of Pound's insult by inference to Social Control and Foundations of Sociology.

14. Pound to Ross, 10 December 1907, Box 4, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin.

15. Pound to Ely, 10 December 1907, Box 36, Folder 9, Richard T. Ely Papers, State Historical Society of Wisconsin.

16. Pound to Ross, 10 December 1907, Box 4, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin.

17. Ely to Pound, 21 April 1908, Box 37, Folder 6, Richard T. Ely Papers, State Historical Society of Wisconsin.

18. Pound to Ely, 11 July 1908, Box 38, Folder 1, Richard T. Ely Papers, State Historical Society of Wisconsin.

19. Ibid.

20. Ely to Pound, 17 August 1908, Box 38, Folder 2, Richard T. Ely Papers, State Historical Society of Wisconsin.

21. Ely to Pound, 29 September 1908, Box 38, Folder 3, Richard T. Ely Papers, State Historical Society of Wisconsin.

22. Pound to Ross, 23 December 1908, Box 4, Folder 3, E.A. Ross Papers, State Historical Society of Wisconsin.

23. Ross to Pound, 7 January 1909, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

24. Pound to Ely, 18 March 1909, Box 38, Folder 9, Richard T. Ely Papers, State Historical Society of Wisconsin.

25. Ely to Pound, 11 October 1909, Box 40, Folder 1, Richard T. Ely Papers, State Historical Society of Wisconsin.

26. Pound to Ely, 22 October 1909, Box 40, Folder 2, Richard T. Ely Papers, State Historical Society of Wisconsin.

27. Ibid.

28. Ely to Pound, 1 December 1910, Box 42, Folder 5, Richard T. Ely Papers, State Historical Society of Wisconsin.

29. Ross to Pound, 8 February 1911, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

30. Ibid.

31. Ibid.

32. Pound to Ross, 13 February 1911, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

33. Ibid.

34. Ross to Pound, 28 February 1911, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

35. Ibid.

36. Pound to Ross, 7 March 1911, Box 5, Folder 1, E.A. Ross Papers, State Historical Society of Wisconsin.

37. Small to Pound, 5 April 1912, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

38. Small to Pound, 30 April 1912, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

39. Small to Pound, 30 January 1914, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.

40. Ely to Pound, 10 April 1916, Box 53, Folder 6, Richard T. Ely Papers, State Historical Society of Wisconsin.

41. Pound to Ely, 13 April 1916, Box 53, Folder 7, Richard T. Ely Papers, State Historical Society of Wisconsin.
42. Ibid.
43. Pound to Ely, 4 June 1916, Box 54, Folder 2, Richard T. Ely Papers, State Historical Society of Wisconsin.
44. Ibid. Interestingly, Pound recommended Albert Kocourek of Northwestern University who subsequently took a polar position to Pound's concerning the possibility of defining and classifying "social interests" (Kocourek 1917).
45. Ely to Pound, 9 June 1916, Box 54, Folder 2, Richard T. Ely Papers, State Historical Society of Wisconsin.
46. Pound to Ely, 20 June 1916, Box 54, Folder 2, Richard T. Ely Papers, State Historical Society of Wisconsin.
47. Ely to Pound, 1 July 1916, Box 54, Folder 4, Richard T. Ely Papers, State Historical Society of Wisconsin.
48. Small to Pound, 1 July 1916, Box 228, Folder 19, Roscoe Pound Papers, Harvard Law School Library.
49. Pound to Bedford, 13 January 1915, Box 7, Folder 3, Roscoe Pound Papers, Harvard Law School Library.

## CHAPTER NINE

### THEORY AND AXIOLOGY IN THE LIFEWORLD: POUND'S VIEWS ON RACE, CULTURE, AND WOMEN

It is our interest at hand that motivates all  
our thinking, projecting, acting, and  
therewith establishes the problems to be  
solved by our thought and the goals  
to be attained by our actions.

-- Alfred Schutz<sup>1</sup>

#### Introduction

The lived social dimension of Pound's theories deserves special criticism in light of his often progressive worldview and frequent support of civil liberties. Especially important in this regard are his views on race, culture, and women. Despite Sayre's (1948: 388) assertion that Pound hated hypocrisy and that "there is no dualism to Pound" (Sayre 1948: 390), the record reveals internal contradictions suggesting that Pound's attitudes toward race, culture, and women were often multi-dimensional and

not all of one stripe. His activities as a Mason and a Quaker reflect the complexity and often contradictory character of Pound's social attitudes.

Review of Pound's social attitudes in practice provides perspective on his sociological ideas, by showing the lived reality of his personal values and ideas in action. The value or axiological background of social theories is an important component of analysis in contemporary philosophy of science (Leinfellner 1973). Radnitzky (1973) considers values a significant part of each theorist's "philosophical groundplan." Leinfellner (1974) considers "norms, values, and obligations" as part of the larger "epitheory" which surrounds any specific theory, that is:

the background knowledge into which a social theory is embedded and without which we may not fully understand such a theory.

Epitheoretical analysis, therefore, "constructs step by step the whole cultural and social superstructure or background knowledge" of a theory (Leinfellner, 1974: 40). More generally, Leinfellner (1985: 321) advances an empirical (rather than strictly philosophical) orientation to theoretical axiology, giving attention to the biography of actual decision-making:

Ethics is first a discipline of psycho-sociology and a theoretical reconstruction of individual actions and decision making in solving social conflicts.

Gouldner (1970:493) set forth the methodological imperative for reflexivity in sociology:

The search for knowledge about social worlds is also contingent upon the knower's self-awareness. To know others he cannot simply study them, but must also listen to and confront himself.

In sum, values (whether implicit or reflexively acknowledged) are part of each theorist's "metascientific worldview" (Hill 1984a) and are necessary presuppositions of theory construction and analysis in science generally and sociology specifically (Hill 1977, 1981a, 1984a).

Alfred Schutz (1970b: 76), the Austrian phenomenological sociologist who found refuge in America at the New School for Social Research during World War II, argued that inconsistency in our everyday understanding of the world is not only possible, but often typical:

The stock of knowledge at hand at any particular moment of our conscious lives is by no means homogeneous or integrated. Its elements are neither consistent in themselves or necessarily compatible with one another. . . . For our purpose, therefore, knowledge means not only explicit, clarified, well-formulated insight, but also all forms of opinion and acceptance relating to a state of affairs as taken for granted.



It is possible to live at times in a world of rhetoric divorced from reality. Pound himself repeatedly pointed throughout his work to the gulf that existed between the law "in action" and the law "in books" (see, for example, Pound 1910a). Such potential for wide discrepancy clearly characterized Pound's own belief in Masonry as an inclusive brotherhood of man when the reality of its social exclusivity was plain for all to see. His embrace of Quakerism and simultaneous love of military science are striking for their apparent incompatibility. The complexity of Pound's lived social philosophy suggests, however, that there is more here than the potentially simple explanation of unreflexive compartmentalization.

Pound's views on race, culture, and women point to a deeper and more pervasive characteristic of his liberal social theory, and perhaps, liberal sociological theories in general. Central to Pound's theory of law was the notion of the "adjustment" of competing interests (social, public, and individual) through adjudication by the courts (Pound 1920b). For Pound, the ultimate principle on which judicial decision should be founded was the preservation of social order (Pound 1928b). His conception of "the social order," however, is a grand, unarticulated abstraction, far removed from the actualities of day-to-day litigation. His formula

for making "adjustments" could both oppress and liberate, as the preservation of the social order was deemed to require.

Pound did not recognize the concept of inalienable human rights. He saw only competing interests that must be balanced, always with a view to maintenance of an undefined social order (Pound 1915b). Clues to Pound's deeply Western bias in measuring the social order are revealed in such statements as:

I am a firm believer in Greek, as a necessity for one who would truly understand all that lives in human thinking and in putting of thought into action. (Pound 1936: 162).

He pointedly broadcast his displeasure at what he called "cults" of unreason and ugliness in philosophy, art, and literature (see, for example, Pound 1929a). He complained to his sister, Louise, in 1946:

In painting there seems to be a cult of the ugly and in what passes for poetry a cult of the rough and of smart Alek effects in style covering usually a notable lack of anything to say.<sup>2</sup>

The liberal aspects of Pound's theories must be weighed against the background of his conservative reverence for the traditions of Western civilization.

Pound's views on civil liberties were not absolute, but relative to the interests competing in any given

situation. Wigdor (1974: 91-92) illustrates exactly this point with regard to Pound's ideas on guarantees of freedom of speech versus state police powers. Pound, as a young lawyer appointed to the Nebraska Supreme Court Commission in 1903, held that distribution of handbills in public could be curtailed by a municipality because community interest in curbing litter was also a legitimate interest when judged by the criterion of maintaining the social order. The conflicting interests must be "adjusted." Free speech must be secured (it too is a legitimate interest insofar as it aids the social order), but not necessarily through the distribution of leaflets in public places. Pound wrote that bills of rights are enumerations of certain liberties, but should not be understood as lists of "secured expectations" (Pound 1928b: 93).

The pragmatic, liberal mechanism in Pound's theory of interests allowed for "adjustment" in social patterns, for adaptation to change, and the evolution of new institutional structures. He wrote:

We have abundance of unofficial, nascent, hardly recognized institutions growing up to do the work of a social order in process of adaptation to modern life. (Pound 1928b: 93).

Room was to be made for new institutions when they had beneficial effects.<sup>3</sup> In Pound's view, industrialization and

urbanization were challenges to the social order and, simultaneously, opportunities for growth and social progress. Pound's scheme opened traditional patterns to change and allowed for shifts in emphasis from individual interests to social interests and social legislation beneficial to the general welfare (Pound 1906a, 1907b). This was Pound's positive contribution as a social theorist.

The practical effect of Pound's theory of adjustment, however, depends ultimately on what one values fundamentally when concrete adjudications must be made between conflicting interests. If one's values are reflexive and enlightened, the solutions can be creative and progressive. But, if one's values are conservative and reactionary, the liberal rhetoric of Pound's ideas can be subverted easily as justifications for oppressive actions.<sup>4</sup> This feature of Pound's theory is perhaps best illustrated below in the discussion of his attitudes toward the professional education of women.

Pound's often contradictory social attitudes reflect his adjustment of liberal idealism to his own frequently unreflexive biases and self-interests. Except for very brief, grudging acknowledgments that legislation can sometimes serve class interests (for example, Pound 1958), he gave no inkling that he fully understood the potential for the hegemonic subversion of social theories and judicial

ideals, especially his own.<sup>5</sup> Pound's faith in the ultimate integrity and values of the legal profession per se was unshakable. His theory of interests reflects and is compatible with his own unreflexive "adjustment" to life in a privileged, upper-middle class, professional world of white males.

### Masonry and Exclusivity

In 1901, Pound became a Mason when he joined Lancaster Lodge No. 54, at Lincoln, Nebraska. He remained active in Masonry throughout his subsequent career at Harvard University, where he was a member of Belmont Lodge, Belmont, Massachusetts (Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the Commonwealth of Massachusetts 1915: 465; Sayre 1948: 119-122). Despite the racial and sexual exclusivity of Masonry (Schmidt 1973: 23-29; Muraskin 1975: 22-25; Vaughn 1983: 18-19) Pound saw fraternal organizations in a positive light. Together with social clubs, professional associations, and trade unions, he discerned utility in fraternal organizations as a sort of social glue reinforcing the social order. Such organizations, in his view, should be especially encouraged where rural, homogeneous neighborhood cohesion and familial ties disintegrated in the wake of industrialization and urbanization (e.g., Pound 1922a: 564-565).

Pound considered fraternal organizations useful supplements to the institution of law, helping secure social control and, in turn, maintaining the social order which, he believed, is a necessary presupposition for civilization (see, for example, Pound 1930b: 1-35). This position is most fully specified in his Masonic writings:

[Masonry] is an organization of human effort along universal lines on which all may agree in order to realize our faith in the efficacy of conscious effort in preserving and promoting civilization. What other human organizations do along lines of caste or creed or within political or territorial limits hampered by the limits of political feeling or local prejudice, we seek to achieve by universality -- by organizing the universal elements in man that make for culture and civilization. (Pound 1915c: 560).

And, further:

[Masonry] makes for civilization by its insistence on the solidarity of humanity, but its insipience on universality, and by the preservation and transmission of an immemorial tradition of human solidarity and of universality. So conceived, this tradition becomes a force of the first moment in maintaining and advancing civilization. (Pound 1915c: 560).

Pound concluded that the philosophy of Masonry transcended creed and local prejudice; and stood for universality and civilization.

Pound's philosophical beliefs and activities as a Mason were contradictory. Whereas his support for Masonry was bound up in positive concerns for the preservation and encouragement of civilization and universality, he simultaneously lent his prestige to an organization that perpetuated highly uncivil, prejudiced membership policies of sexual and racial exclusion. The unity and welcome Pound experienced in Masonry were, like so many enjoyable attributes of "fun" events in American life, components of a ritual drama built in part by artificially excluding and generating alienation in others (Deegan 1989b: 15-16).

#### Society of Friends

Pound's lifelong attachment to Masonry is, at first, made more perplexing given his adult embrace in 1930, at age sixty (Sayre 1948: 389), of the Society of Friends, a religious group noted for tolerance and commitment to social justice (Rowntree 1919; Auguste 1931; Forbes 1986). Pound's family were Quakers and he was attracted to what he perceived as the civilizing aspect of this faith. For example, Pound joined with five academics to sign a letter addressed "To the Scientifically Minded" inviting fellow scholars to give serious consideration to the Society of Friends. The text of the letter includes this statement:

Most Friends agree that the Sermon on the Mount presents the highest ideal for a way of life; this we accept not only on authority from without but mainly as conviction from within. We thus unite on a common purpose; a human society organized on a basis of good will and friendliness. There are differences among us as to details and methods, but not as to this desired end. Our objective determines for us the meaning of RIGHT and WRONG. RIGHT is that which serves the common purpose, WRONG is that which hinders or thwarts it. It is the standard by which we undertake to test the organization of society, international policies, and indeed all human conduct and institutions. Our opposition to war is based on the conviction that war hinders the development of the world family; yet we do not exclude from membership those who do not have that conviction.\*

Pound subscribed to a religious perspective pragmatically oriented to fostering "the common purpose" and "human society organized on a basis of good will and friendliness."

The Society of Friends is well-known for its positive stand on pacifism, but allowed room for dissent (Rowntree 1919: 41-42; Soloman 1986). Although raised a Quaker and later embraced Quakerism as an adult, Pound also had militarist tendencies as a youth (where he avidly participated in the student militia at the University of Nebraska).<sup>7</sup> As an adult, he was a devotee of the military history of the Civil War (Sayre 1948: 52, 290). His 1917 article in the American Journal of Sociology is replete with enthusiastic military analogies.



He displayed scepticism of Quaker abilities to evaluate the technical details of military matters. He chided his sister, Olivia, in 1950 after she wrote to him about the quality of arms available to Mao Tse-tung's forces in China, "With great respect for your informant I venture to suspect that a member of the Friends Service Committee is no particular judge of modern military equipment."<sup>8</sup> Pound, however, never served in the military.

Attracted by pragmatist ideals, Pound the military enthusiast, joined a religion whose hallmark was pacifism, and he joined the exclusionary Masons while describing it as a fraternity that "is to be of all men and for all men" (Pound 1915c: 545). At the least, Pound had considerable capacity for internal contradiction. This trait marked his views on race, culture, and women.

### Race and Culture

Pound came of age in a relatively homogeneous, frontier community on the eastern Great Plains and was introduced to Edward A. Ross' approach to sociology at the University of Nebraska (see Chapter 4). Ross' views included the racist propositions that:

In every major race are found individuals capable of appropriating (I do not say contributing to) the intellectual heritage of the advanced races. (Ross 1930: 202).

And that:

It would be passing strange if all branches of mankind shared equally in gifts of intellect when within each race we find inheritances all the way from idiot to genius. (Ross 1930: 202).

Thus, Ross could account for gifted members of a racial group while maintaining that the group as a whole was inferior to another. As to the wisdom of interracial procreation, Ross advised caution until there was comprehensive scientific study of "the numerous regions where there has been much crossing of color races." In the meantime, he advised:

Since the scrambled can never be unscrambled, social and legal barriers against crossing should be looked upon as the dictate of prudence rather than prejudice. (Ross 1930: 202).

The view that laws barring interracial marriage were prudent rather than prejudiced was clearly racist, but Ross' views embodied greater complexity than the quotations above at first suggest.

For example, Ross (1911: 42) considered the Chinese to have a "special race vitality" superior to northern Europeans in terms of physical recuperative powers and resistance to infections. Ross' brand of racism was not wholly ethnocentric, he did not see Europeans as

biologically superior when compared to the Chinese. He combined environmental determinism and evolutionary theory to explain what he thought to be superior biological traits.

At the same time, Ross observed that "the contemporary Chinese intellect is sterile because of the state of the social mind" (Ross 1911: 54), and that "the patent stagnation of the collective [Chinese] mind is due not to native sluggishness but to prepossession by certain beliefs" (Ross 1911: 57). This aspect of Ross' racial ideas primarily involved consideration of culture per se. In the Chinese case, he judged that Chinese culture was moribund for ideational reasons, not from biological or genetic causes.

Like Ross, Pound considered race in its various forms to be a real factor in the evolution and functioning of social institutions. Discussing the relationship between law and race, Pound argued that group racial characteristics in some way influence the development of legal institutions:

The argument that seeks to prove that race has nothing to do with law would demonstrate that the laws enacted by an assembly of drunk men would carry no trace of the merely personal drunkenness of each individual. (Pound 1911-1912, III: 498).

And, on the cultural results of interracial mixing, Pound was not sanguine:

The problem of the relation of law and mixed races is becoming acute in some parts of the world, and the effect upon the law of a mixed race, whose members are moved by diverse ideals and are incapable of concerted action toward a common good, is becoming manifest. (Pound 1911-1912, III: 498).

A generous interpretation of such passages (which are, in fact, rare in Pound's writings) is to suggest that Pound was primarily concerned with the cultures associated with various racial groups rather than with biological or genetic issues. That is to say, recognition that various racial groups do exhibit cultural differences and that these differences can (as Ross believed) result from causes other than biology or genetic inheritance. While Pound judged that race was operative in the development of legal institutions, he concluded that, overall, race was of minor importance for explaining variations in legal principles between groups (Pound 1911-1912, III: 498).

Pound considered cultural "mixing" problematic rather than enriching. He saw the cultural heterogeneity typical of large American cities as a social problem in that it often made law enforcement more difficult and resulted in widely diverse values regarding the law. Inability to read English would, by way of illustration, make it difficult for immigrants to know and learn the laws of their new home. Thus, unintended law violations by immigrants (as well as

the victimization of immigrants by unscrupulous Americans) were likely, resulting in greater workloads for an already heavily burdened judicial system. To such problems, Pound believed that education and voluntary cooperation -- things that would help maintain the social order -- were important solutions. The pragmatic problem was to find ways to speed education, encourage cooperation, and deepen general appreciation of the social order.

Cultural diversity made it irresponsible, in Pound's view, for Anglo-American jurists to continue to assume that the Anglo-American values they used as guides when interpreting the common law were revered or even understood by immigrants from alien societies. This insight is as close as Pound appears to have come to a reflexive critique. In 1906, in the first speech ever by a law professor to the American Bar Association, Pound (1906a) began to outline this and other criticisms, to the great displeasure of legal traditionalists (Wigdor 1974: 123-129). Without shared values, Pound felt that respect for and understanding of the law were undermined. For example, if a convicted murderer was sentenced to life in prison rather than death, Pound would expect that persons from a society where capital punishment was automatic might well lose respect for American "justice," especially if it was a family member who had been murdered (Pound 1907b).

Pragmatically, Pound accepted cultural heterogeneity in modern America as a fait accompli, the consequences of which must be addressed realistically by the law, the legal profession, and other institutions (such as education, social work, public opinion, and government) as could lend a positive and cooperative hand (see, for example, Pound's address to the National Conference of Social Work; Pound 1931c). No longer, he urged, could American judges pretend that they dispensed justice in a homogeneous, rural world. In rendering their decisions, judges must now take account of a much broader set of cultural values and social expectations. Nonetheless, Pound's own social world was narrowly drawn.

The greater part of Pound's professional life was rooted in a white, male world of bar associations, scientific organizations, and elite universities. Known contacts with Blacks are few. In sociology, Pound had one documented exchange in 1936 with W.E.B. DuBois, a Harvard graduate and student of Max Weber. As a Black, DuBois was forced to live his professional life well outside the mainstream of white, male sociology (Deegan 1988e). DuBois wrote to Pound soliciting potential input for his projected Encyclopaedia of the Negro.<sup>9</sup> Pound responded affirmatively:

I should be glad to contribute an article or articles on some subject to be decided upon later, as you suggest. There are many important legal subjects which should find a place in such an encyclopaedia, and many of them would come within the purview of my studies.<sup>10</sup>

Pound listed possible topics, including: the law of slavery, constitutional guarantees of individual rights as related to Blacks, and the nature of labor contracts in southern states. Unfortunately, the Encyclopaedia was never published and there is no evidence that Pound pursued these possibilities in other formats (cf., Setaro 1942; Strait 1960). At the least, however, Pound supported the idea of the project.

Few Blacks entered the halls of Harvard's Law School, but a small minority of Jewish students and faculty regularly obtained entry, although not always easily. Pound's record on anti-Semitism is muddled. He was an early friend and supporter of Felix Frankfurter, whom Pound chose to co-direct the Cleveland Survey of Criminal Justice. At other times, especially during the 1920s, Pound was charged with failure to actively press the appointment of Jewish faculty to the Law School (Baker 1984: 233). Simultaneously, he wrote sympathetically during this era to Frankfurter about failed appointments at other schools:

I have been concerned to learn that two law faculties in A grade universities unanimously recommended Isaacs for appointment and in each one the Trustees turned him down on the sole ground that he was a Jew. (Pound, quoted in Baker 1984: 233).

Later in life, Pound and Frankfurter became enemies, a development rooted in Pound's chastising of Frankfurter for what Pound considered to be a well-reasoned but ill-timed public statement in the Atlantic Monthly on the Sacco-Vanzetti case (then still under appeal in the courts). To complicate matters, aspects of Frankfurter's blistering public attack landed squarely on John H. Wigmore (Pound's former dean and colleague at Northwestern University) with whom Pound and E.A. Ross had founded the American Institute of Criminal Law and Criminology (Baker 1984: 261, 270; Wigdor 1974: 249-250; Sayre 1948: 218-223).

Frankfurter was distressed when Pound took a trip to Europe in 1934 and then made statements to the press on his return that there was no discernable military presence or persecution of Jews in Germany (Baker 1984: 346). Later that year, Pound invited Frankfurter to a ceremony at the Law School to be followed by a luncheon at the German Consul. Frankfurter declined the invitation in a pointed and firmly worded letter of rebuke to Pound. Matters worsened when Frankfurter learned that at the ceremony Pound



was to receive "an honorary degree from the University of Berlin, to be presented by the German ambassador to the United States" (Baker 1984: 347).

Pound's love of elaborate ceremony ran deep, as illustrated above by his invention of investiture rituals and symbols for the Sem. Bot. at the University of Nebraska (see Chapter 3), his youthful enthusiasm for military drill, and his interest in the history and evolution of Masonic rituals (Pound 1916a, 1918). Years later, in 1959, for example, he wrote excitedly to his sister, Olivia, "I have startling news to communicate.":

Yesterday the Italian Consul General came to see me bringing a highly formal letter addressed to Professor Roscoe Pound, Commendatore dell 'Ordine al merito della Repubblica Italiana. . . . It seems, therefore, that I am to be formally presented with the diploma and the decoration on Wednesday next at 3 o'clock in the room named after me here in Langdell Hall. Dean Griswold and the Italian Consul General have taken charge of the arrangements and it looks as if the event would be one to be conducted with much "eclat and debris."<sup>11</sup>

His delight in ceremonial pomp may have dulled any potential concern on his part about the propriety or wisdom of accepting an honorary degree that might be regarded by others as an anti-Semitic symbol.

Pound's acceptance of the German honor in 1934 was, likely, also influenced by his admiration for German

scholarship and the knowledge (and perhaps envy) that many of the American scholars he admired (including the sociologists: Lester Ward, George Howard, Amos Warner, Albion Small, Charles Henderson, and E.A. Ross, not to mention his sister, Louise, who earned a doctorate in literature at Heidelberg) had the benefit of studies in and degrees from German universities. Christakes (1978: 97-98) notes, in his biography of Albion Small:

Attendance at German graduate schools was a common experience for American students during this period before the extensive development of postgraduate education in the United States.

Pound was well aware of the stature of German degrees and wrote that at the turn of the century, a time when he pursued his graduate studies in Nebraska, "it was the ambition of the American aspirant for academic distinction to obtain a Doctor's Degree from a German university" (Pound 1957b). Perhaps envy or selfishness prompted Pound's actions in 1934, but this rationale does not excuse his insensitivity to German anti-Semitism. At most, it makes understandable (within the context of Pound's profound admiration for continental scholarship) that he may have coveted the honorary degree from Germany.

Perhaps, too, Pound felt that intellectual unities and academic tradition transcended (or should transcend)

political differences between countries. In 1930, he had been named (as one of fifty-five distinguished Americans, including Isaiah Bowman, John Dewey, William F. Ogburn, Grace Abbott, Belle Sherwin, and, his sister, Louise Pound) by the U.S. Secretary to State to membership on the National Council for Intellectual Cooperation.<sup>12</sup> Further, Pound relished his international lecture trips and any opportunity to exercise his formidable language skills. Nonetheless, Pound's action in accepting the German honorary degree during the troubled pre-war days of Nazi Germany confirmed for Frankfurter and others the view that Pound was suspect on the issue of anti-Semitism.

Other dimensions in the ordering of Pound's social priorities are revealed in his association with the New School for Social Research and the search for positions for professors put out of schools in Nazi Germany. Alvin S. Johnson (who with E.R.A. Seligman helped found the New School in 1917) earned his A.B. degree at the University of Nebraska two years behind Pound and knew Pound as a faculty colleague at Nebraska at the turn of the century (Johnson 1952: 99, 173-174; Rutkoff and Scott 1986). Pound served on the school's Advisory Committee, and in 1927 this group included Willa Cather, William F. Ogburn, Mary K. Simkovich, and Mary van Kleeck.<sup>13</sup>

Pound gave a lecture course on "The Ideal Element in Law" at the New School in the early 1930s<sup>14</sup> and contributed articles to the New School's massive Encyclopaedia of the Social Sciences (e.g., Pound 1930a; 1931a; 1931b; 1932a; 1932b; 1933b; 1934) edited by Seligman and Alvin S. Johnson. Pound had served (at Ross' instigation) with Seligman on the Academic Freedom Committee of the American Association of University Professors starting in 1914.<sup>15</sup>

Pound lent his support in 1933 when the New School organized "The University in Exile," a sort of refugee campus in New York for professors who fled the oppression of Nazi Germany.<sup>16</sup> Johnson wrote to Pound in mid-September 1933 recounting the plan:

I have often observed that a year spent in a German university has been profitable for the American student; and it is our intention to conduct our faculty organization as nearly as possible according to the plan of a German faculty. We can preserve the philosophic and historical approach, and the master and apprentice form often attained by the German university at its best.<sup>17</sup>

Paradoxically, it may have been the German model of instruction that intrigued Pound, and the proposal may have whetted his appetite for the honorary degree that arrived from Berlin in 1934.

Pound lent moral support to "The University in Exile," but he felt that first priority for jobs in American universities should go to American professors in need of work rather than to refugees from Germany. Franz Boas, the Columbia anthropologist, asked Pound in May 1933 to help secure positions for those who were coming to the United States from Europe. Pound's response to Boas focused on the exigencies of depression-era America:

Certainly I should be glad to do what I could for these teachers some of whom rank among the foremost in the science of law. But what gives me pause is that the Johns Hopkins Institute of Law has just been compelled to close down leaving three American law teachers of the first importance without positions, and that a number of other teachers of law find themselves without positions because of the necessity under which many schools are laboring of operating with greatly reduced budgets. I am afraid we ought to take care of these men first.<sup>18</sup>

Given limited resources, Pound's priorities resided with the homefront. This populist position mirrored the protective rationale with which E.A. Ross earlier opposed Japanese immigration to the United States in 1900, a stance that got Ross fired from Stanford University (Weinberg 1972: 47-48), paving the way for Ross' subsequent move to the University of Nebraska.

As the situation in Europe worsened, Pound made efforts to help, but felt there was little he could do concretely.

Money in educational institutions was still in short supply and the flow of refugees was greatly expanded. He responded in 1940 to Georges Gurvitch (a sociologist of law formerly at the University of Strasbourg in Alsace) with this picture of the situation:

Unhappily the country is literally flooded with refugees from European institutions of learning, and I have been at my wit's end what to do to help them. Among others, Hans Kelsen, Elemer Balogh, and H.D. Hazeltine of Cambridge, England, have been seeking my assistance, and I have been trying to do everything that I could for them. When I tell you that until today, after many months of endeavor in all directions, it has not been possible to find something for Hans Kelsen, you will see how difficult the situation has become. One of the main reliances of the refugee professor is the University in Exile conducted by Professor Alvin Saunders Johnson in New York City.<sup>19</sup>

Gurvitch, perhaps acting on Pound's advice, secured an invitation to teach at the New School for Social Research and came from France to New York.<sup>20</sup> Pound did what he could for refugee scholars, but structurally was restricted in his ability to leverage invitations. Four years prior, in 1936, he retired from the deanship of the Law School, and hence, he lamented was "in no position to do more than make recommendations to my many friends and acquaintances in the legal and the law teaching professions."<sup>21</sup>

### Chinese Law and Culture

In 1946, at age seventy-six, Pound undertook a survey of justice in eastern China at the invitation of the Ministry of Justice at Nanking. This project was conceptualized as a "reconstruction" effort aimed to help China get on its feet following the expulsion of the Japanese at the end of World War II. When E.A. Ross traveled to China in 1911, he sent Pound a picture postcard depicting a tableau from a "Court of Justice" in Canton, adding the message, "No criminal law reform here."<sup>22</sup> Pound, however, viewing the judicial system in the mid-1940s, was impressed with many aspects of China's legal institutions. For example, he wrote, "China has excellent codes. They will compare with the best of the recent codes which have been framed and enacted since 1896" (Pound 1953: 9). Pound did not share Ross' earlier, negative assessment of the state of Chinese culture. Pound wrote:

The Chinese are a patient, diligent, intelligent, idealistic people, filled with determination to set up and maintain a modern, democratic progressive polity, and thus to take and hold a place among the great peoples of the world.  
(Pound 1953: 16).

On the other hand, Pound was quick to point to an example of what he considered to be the resulting bad effects of cultural mixing. He suggested that agricultural production

shortages did not stem from Chinese agricultural practices, which he thought admirable. Rather, the borrowing of "a Western law of inheritance which makes for increased subdivision" of the land was the culprit, and made for farms too small to be efficiently managed (Pound 1949: 3).

Pound's admiration for the Chinese and his favorable estimate of their cultural potential put Pound in opposition to the Chinese Communists then gaining strength under Mao Tse-tung. Paradoxically, it was another former Nebraskan, Anna Louise Strong (1949) who supplied the West with pro-Maoist accounts of the Communist movement in China. The Communist platform was too radical for Pound, too wasteful of traditions evolved over long centuries of development and adjustment. Thus, he found himself in opposition to many American liberals and aligned with conservative supporters of Chiang Kai-shek. He chafed under this development, and wrote to his sister, Louise:

Whenever I venture to tell the truth about things in China as I observed them at close range this summer, I am told that I am reactionary. I suppose one ought to believe 100 per cent. in Communism and in the benevolent intentions of Russia in the Orient in order to be a liberal.<sup>23</sup>

But, Pound was starting to take positions endorsed by conservative interests in the United States. In 1947 he wrote a pamphlet for the conservative Industrial Conference



Board on the need to institute reforms of federal administrative procedures (Pound 1946). And, in 1957, Pound wrote a pamphlet published and distributed by the American Enterprise Association in which he strongly criticized the "legal immunities of labor unions" (Pound 1957a).

The multi-dimensionality and contextual relativity of Pound's ideas resulted, at different times, in very different critics condemning and applauding his social views. As a young law school dean from Nebraska in 1906a, his liberal observation that the bar failed to respond to obvious social changes in American life (Pound 1906) resulted in his being labeled a radical, "Pound and his address were hotly denounced from the floor" (Harding 1957: 14). As an accomplished, mature jurist, his liberal, comparative admiration for traditional Chinese culture, earned him kudos from conservatives.

#### Women and Sexism

Pound's attitudes toward women were no less confounding than his views on race and culture. He held many women scholars (including his sister, Louise) in collegial esteem, but there is no record, for example, that he ever tried to secure or encourage a qualified woman for a faculty position at Harvard.<sup>24</sup> He approved of co-education, but

only if the practice did not deprive deserving males of a place in the classroom.

Women scholars with international reputations were part of Pound's professional network. His collegial contacts with sociologists and other social scientists were noted above (see Chapter 5) and included: Edith Abbott, Grace Abbott, Jane Addams, Sophonisba P. Breckinridge, Florence Kelley, Julia Lathrop, Mary van Kleeck, and Miriam Van Waters. These women engaged with Pound in significant social movements, such as child labor law legislation, the National Consumer's League, the American Institute of Criminal Law and Criminology, and various organizations oriented to social action. When called to duty by the Abbotts, his response could be immediate and enthusiastic. He wrote to Grace Abbott in 1918, "On receipt of your telegram I threw aside everything else and went to work on the child labor matter."<sup>25</sup>

Substantive sociological research efforts were also concluded through the National Commission on Law Observance and Enforcement (van Kleeck, Van Waters, and Edith Abbott), and the Harvard Crime Studies (Van Waters). As noted above (see Chapter 6), Pound sought Lathrop's help for the Cleveland Survey of Criminal Justice. Pound also utilized the behind-the-scenes contacts of philanthropist Ethel Sturgis Dummer to secure the services of Van Waters for the

Harvard Crime Studies.<sup>26</sup> Ada Comstock, President of Radcliffe College, served with Pound as a Commissioner on the National Commission on Law Observance and Enforcement.

Pound knew and appreciated the professional and intellectual talents of academically well-trained women from co-educational institutions. And, when Pound was invited in 1925 to become the president of the University of Wisconsin, an offer he declined, he noted:

This offer is most attractive, both to my wife and to myself as Westerners, as graduates of a State University, and as believers in the Western system of co-educational State Universities.<sup>27</sup>

Nonetheless, despite his support for co-education, the rights of women could, in Pound's worldview, take second place to what he considered more compelling interests.

Pound saw the law as a man's world, so long as there were qualified men who wanted to practice and the facilities for training men were in short supply. In a 1944 letter, apparently to a fellow Mason, he wrote:

As to my connection with the matter, the question [of admitting women to the Harvard Law School] did not arise again until the time when it became necessary for us to limit numbers as the School was outgrowing even what we had supposed would be ample quarters. When it became necessary to limit the entering class to 600 I remember that for a time I had to wrestle with as many as 1100 applicants for admission and down to the time when I retired from the Deanship there were always many hundreds of applicants beyond the

number we could admit. It seemed to me that it would be a mistake to admit women under such circumstances. When we could not take care of anywhere near all of the young men, graduates of the best colleges in the country, it did not seem to be expedient to displace more men applicants to admit women. When I taught at Nebraska we had a number of women students, as we had also at the University of Chicago and at Michigan the summer I taught there. Northwestern when I was a teacher there did not admit women. As a product of the co-educational college I have no objection to women students, but I do not think it advisable to admit them to a professional school which cannot take care of all the men who have a legitimate claim to admission.<sup>28</sup>

In the world of limited, elite opportunities for professional training, Pound relegated women to second-class citizenship. Pound's logic, in protecting classroom space for men, was structurally similar to his protection of American teaching jobs for economically displaced American law professors as against refugees from Nazi Germany.

Pound also opposed the Equal Rights Amendment, ostensibly for reasons of constitutional law, but it must be recalled that Pound's legal philosophy made no room for "rights" in any inalienable sense. Given that support for the Equal Rights Amendment is today a litmus test for middle class feminists, the meaning of Pound's opposition must be placed in the context of earlier times. Especial note must be made that many progressive women in the 1920s, including Jane Addams, Florence Kelley, and most others in the

Hull-House group, opposed the amendment because they feared it would strip away protective legislation for working class women, legislation that had been obtained only by long struggle (Goldmark 1953: 180-188; Lemons 1973).

Pound joined a group of forty-three lawyers and law school teachers to endorse a statement, prepared by Paul Freund, a Harvard law professor, in opposition to the proposed Amendment. The detailed statement concluded with this observation:

The basic fallacy in the proposed Amendment is that it attempts to deal with complicated and highly concrete problems arising out of a diversity of human relationships in terms of a single and simple abstraction. This abstraction is undoubtedly a worthy ideal for mobilizing legislative forces in order to remedy particular deficiencies in the law. But as a constitutional standard, it is hopelessly inept. That the proposed equal rights amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty.<sup>29</sup>

Pound's opposition went beyond simple endorsement of a public statement. Mrs. Thomas McAllister, Chair, of the National Committee to Defeat the Un=Equal Rights Amendment, wrote in 1946 specifically to thank Pound for his "assistance in bringing to the attention of the Congress the legal question involved" in the proposed amendment.<sup>30</sup> In

Pound's view, opportunities for women are desirable, but not if the cost is serious disruption of the legal order. Pound conceptualized the improvement of women's legal status as a progressive development accomplished through incremental adjustments as required in specific circumstances, an assumption reflected in his Encyclopaedia Britannica articles on the legal status of women (Pound 1922b, 1926). Pound's position on the amendment could be seen negatively given his relativist perspective on "rights," but it could be seen positively if his primary concern had been preservation of protective legislation for working class women in the labor force.

Pound's relationships with intellectually sharp women were largely at a distance rather than shoulder to shoulder. His sisters in Nebraska admired him and, so far as the archival record indicates, he generally maintained cordial relationships with the professional women with whom he had contact. Independent accounts of Pound's attitudes toward women are rare, but the few existing reports are generally critical.

Pound taught very few women students, none at Harvard until after he resigned the Law School deanship in 1936 and was appointed University Professor, a status allowing him to offer whatever courses he wanted in virtually any department. Until he offered his sociology of law course at

Harvard in the Department of Sociology in the 1940s, in which students from Radcliffe were allowed to enroll,<sup>31</sup> Pound apparently taught no women students in regular winter courses except at the University of Nebraska, the University of Chicago, and his night course at the New School for Social Research, as women were barred from the law schools at Northwestern and Harvard. Edith Abbott took courses from Pound at Nebraska and her sister, Grace Abbott, took courses from Pound at the University of Chicago. In the manuscript of Edith Abbott's biography of Grace Abbott, Edith Abbott wrote that Ernst Freund and Roscoe Pound were men "who liked to have some women students" in their courses. Edith Abbott (1939, 1950) struck that observation from her published account, apparently preferring to pass over Pound's classroom preferences in silence.<sup>32</sup> U.S. Circuit Judge Florence Allen, who took instruction from Pound at the University of Chicago, recalled:

I had always admired Dean Pound as a teacher, but the four women in Chicago University Law School when I was there felt he discouraged us in our wish to practice law. He thought it was no field for a woman. (Allen 1965: 49).

Allen's account clearly attributes patriarchal bias to Pound. Grace Abbott took law courses at the same time as Allen and may have been one of Allen's her classmates, but

after six months of work at the University of Chicago Grace Abbott dropped out, noting "I'm not interested in taking any more law courses" (Abbott 1950: 376). Grace Abbott continued:

I'm not interested in subjects like "Bills and Notes," or "Wills," or "Real Property." I want to understand fundamental legal principles so that I can know what the rights of a poor man really are. Now that I've had the basic courses I'm willing to stop, and I've talked with father about it, and he thinks I'm right.

According to Allen's account, Pound contributed to what would today be called a "chilly climate" for women law students, and Grace Abbott may have been one of his casualties -- unwittingly abetted by Abbott's father.

There are virtually no character portraits of Pound authored by the intellectually accomplished women who knew him. Thus, the following sketch, written by Willa Cather (a Nebraska writer and classmate of Pound's sisters), is particularly intriguing for its insight into Pound as a man seen by a perceptive and articulate woman:

He was one of those who come back on Charter Day [at the University of Nebraska], in his own mind at least, one of the heroes of the yore days. He was tall and slender and wore his hair parted in the middle. He stood around the halls button-holing old acquaintances and showing the University to them. He exhibited to them campus, buildings, and faculty, with an air of proprietorship and pleased condescension. He



was, by the length of the word he used, a member of the botanical seminar. He called everything by its longest and most Latin name, and the less his victim knows about botany the more confidential he becomes and the more copiously he empties forth Latin words upon him. In his early youth he was a notorious bully, and all the very little boys of the neighborhood used to be afraid to go past his home. Now he bullies mentally as he used to physically. He loves to take rather weak minded persons and brow beat them, argue them down, Latin them into a corner, and botany them into a shapeless mass. It is the same bully instinct a little refined. He seemed very enthusiastic about University matters, but it seemed rather boyish and immature in a man of his age. It was not a large kind of enthusiasm that could take principles and beliefs. It was a petty traditionary sort of enthusiasm that was confined to a few people and incidents. He is liberal to all university enterprises but it seems to be rather to perpetuate his own name and fame among the students. He has no particular business except hanging around the University in order that people may ask who he is and be told what fine marks he used to get in his classes. He has ability enough, but he never got past the blue-ribbon sheepskin, "vos salutamus" stage. He is a university graduate, and that's all he ever will be in this world or that to come.<sup>33</sup>

The text above is reproduced from a typescript in the Roscoe Pound Papers at the Nebraska State Historical Society. How it got there, or whether it represents an early draft or subsequent revision prepared by Cather herself are unknown.

A slightly altered version was published by Cather in the Hesperian on March 10, 1894 (and is reprinted in Cather 1970, I: 122).<sup>34</sup> Although Cather enjoyed a reputation as an "incomparable roaster" (Slote 1966: 17), and did not

identify Roscoe by name in her essay, the Pound family discovered little comfort in Cather's description of Roscoe and brought a hiatus to Cather's schoolgirl friendship with Roscoe's sister, Louise (William M. Curtin, in Cather 1970, I: 122). Cather's short essay pointedly suggests that Roscoe Pound had well-developed potential for posturing, for becoming too full of his remarkable achievements. The most recent criticism on Cather's writing (Woodress 1987: 87) argues that "there is a good bit of truth in the 'character' she wrote, and she may not have given any thought to how easily identifiable her subject would be."

Nonetheless, the same characteristics, glad-handing, good-natured bullying, and cheery pride in his alma mater, are precisely the attributes so often admired by unreflexive males as the nadir of the hale fellow well met. For example, Alvin Johnson's account of Pound's linguistic expertise was much more favorable than Cather's. Johnson (1952: 99) admired Pound's abilities and winked at his use of that skill to verbally dazzle the local townfolk.

And to the hundreds, and thousands, who had struggled and fought with Latin and Greek in the University of Nebraska, I know only one who had penetrated into the real secrets of the literature, and that was Roscoe Pound, who would use his wonderful command of Greek and Latin literature to epater les bourgeois.

During a period of strained faculty relations at Nebraska, Johnson (1952: 173-174) was deeply impressed by Pound's ability to rouse his fellow academics to join in good natured choral song that helped heal their differences. At the same time, the faculty at Nebraska comprised a primarily male club. Pound felt at home with his brothers, he was a man's man. Compare Cather's appraisal with Charles Bessey's grateful words (Chapter 3) thanking Pound for returning to the University of Nebraska to tell a new generation of students about the "old days" in the Sem. Bot.

Pound's patriarchal perspective paralleled Ross' racist logic. The brilliant accomplishments of the women professionals that Pound knew and worked with did not convince him that women have inalienable rights to equal opportunity, rights that should be guaranteed by the state. It would be consistent to suggest that Pound thought these women capable of appropriating but not contributing to the highest levels of male achievement. In this way, Pound could consistently admire the work of the Abbotts, Breckinridge, Lathrop, and others while holding generally that women had little if any place in professional law schools. In recent symbolic interactionist analyses, attitudes similar to Pound's are characterized as a "moderate" position mid-way between "traditional"

patriarchal beliefs and enlightened "modern" ideas about women (Martin 1980: 102-107).

### Conclusion

To the extent that Willa Cather's stinging portrait hits valid ground, Pound can be seen as a man unaware that others sometimes saw him, as Frankfurter came to see him, very differently than he saw himself. He believed himself a liberal, progressive man, and in many ways he was. At the same time, he could display insensitivity to anti-Semitism and harbor condescending, patriarchal attitudes toward the education of women for the professions. Pound's attitudes toward race, culture, and women exhibit complexity, internal contradiction, and the result of what he perceived to be competing claims on his loyalties. In striving for progressive solutions on one dimension, he sometimes found himself a conservative on others. The social order, according to Pound, resulted from myriad adjustments between competing interests, and these adjustments were accomplished, as often as not, by a court system that rose, in Pound's mind, well above the special interests of any class or group. Pound's social attitudes mirrored this theory and his own self-interested and unreflexive conception of the social order.

### Notes for Chapter Nine

1. Quotation from Alfred Schutz (1970a: 111).
2. R. Pound to Louise Pound, 14 November 1946, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.
3. See, for a recent example along similar lines, my analysis of the potential social benefits possible from legislative endorsement of surrogate parenting contracts (Hill 1987: 79-85).
4. Elsewhere, along this line, I analyze the remarkably flexible features of language used to rationalize vindictive tenure decisions (Hill 1984d), the coercive use of "holistic" and "community" imagery by "feminists" (Hill 1984c), and the convoluted violence of claiming "democratic" values in defense of reactionary family policies (Hill 1985b).
5. For a detailed study of hegemonic ideology in a profession, see Hill (1985a).
6. J. Holmes, R. Pound, J.R. Smith, T. Jenkins, and B. Baldwin to "The Scientifically Minded," undated letter on letterhead of the Friends' General Conference, Philadelphia, Box 4, Articles, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.
7. The Hesperian Student (15 April 1884: 7) commented on Pound's military activities (at age 14) in the Latin School:

The Cadet Band claims the smallest drum major in history. Roscoe Pound is the young gentleman who has been elevated to the position and although he can scarcely see over the bass drum he is better versed in military tactics than the best six-footer in the ranks.

Pound's academic transcript for his undergraduate years show his superior achievement in military courses, most of which were required for male students, including: Drill (six quarters), Infantry Drill (four quarters), Artillery Drill (four quarters), Infantry Tactics (two quarters), Artillery Tactics, and Army Regulations (Transcript, Record

of Class of 1888, Roscoe Nathan Pound, University of Nebraska-Lincoln).

Pound's success in matters military is evidenced by his rise to top positions in the University's Military Department. During his senior year, the 1887-88 University of Nebraska Catalogue (pp. 29-31) records that Pound was Captain of Company "A," one of three companies in the University Battalion. The Captain of Company "C" was Jared G. Smith, with whom Pound later traversed the Nebraska Sand Hills on a two-person botanical expedition (cf., Chapter 2). In the University Battery of the Artillery, Pound held the position of "Gunner."

When interviewed about his student days at Nebraska, Pound recalled with relish a clandestine "prank" in which he and his fellows fired an artillery blast, destroying the laboratory of a despised university professor (Roscoe Pound, tape-recorded interview, Cambridge, Massachusetts, 12 July 1962, interviewed by Robert Manley. Roscoe Pound Biography and Bibliographical File, University Archives, University of Nebraska-Lincoln).

8. R. Pound to Olivia Pound, 16 August 1950, Box 2, Clippings, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

9. DuBois to Pound, 10 September 1935, Box 13, Folder 8, Roscoe Pound Collection, Harvard Law School Library.

10. Pound to DuBois, 16th October 1935, Box 13, Folder 8, Roscoe Pound Collection, Harvard Law School Library.

11. R. Pound to Olivia Pound, 25 November 1959, Box 1, Folder 9, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

12. Press Release, Department of State, 3 December 1930, Box 1, Folder Correspondence 1930, Louise Pound Collection, State Archives, Nebraska State Historical Society.

13. Announcement, New School for Social Research, Spring term 1927, Box 74, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

14. Johnson to Pound, 21 September 1931, Box 74, Folder 10; Johnson to Pound, 26 February 1931, Box 74, Folder 9, Roscoe Pound Collection, Harvard Law School Library. Forty-seven students enrolled, most were lawyers. Pound's course on

"The Ideal Element in Law" was offered in twelve lectures given on Thursday evenings. The class roster included two women, Constance Williams (an economist), and Alice Waldo (a social worker). Class roster, New School for Social Research, Box 74, Folder 10, Roscoe Pound Papers, Harvard Law School Library.

15. Seligman to Pound, 30 March 1914, Box 228, Folder 11, Roscoe Pound Collection, Harvard Law School Library.

16. The history of "The University in Exile" is detailed in Rutkoff and Scott (1986: 84-106). These authors, however, make no mention of Pound's interest in or support of the idea, nor do they note the friendly, collegial relations between Pound and Johnson.

17. Johnson to Pound, 14 September 1933, Box 74, Folder 10, Roscoe Pound Papers, Harvard Law School Library.

18. Pound to Boas, 19 May 1933, Box 7, Folder 23, Roscoe Pound Papers, Harvard Law School Library.

19. Pound to Gurvitch, 21 August 1940, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library. Kelsen, formerly a professor in Vienna, went to teach in California and was, in Pound's opinion, "the leading neo-Kantian analytical jurist of today," Pound's lecture notes on the Sociology of Law, undated, Box 83, Folder 5, Roscoe Pound Papers, Harvard Law School Library. Kelsen was eventually brought to Harvard. His works include Society and Nature: A Sociological Inquiry, published by the University of Chicago Press.

20. Gurvitch to Pound, undated, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

21. Pound to Gurvitch, 21 August 1940, Box 135, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

22. Ross to Pound, 8 May 1911, Box 227, Folder 28, Roscoe Pound Papers, Harvard Law School Library.

23. R. Pound to Louise Pound, 14 November 1946, Box 1, Folder 7, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

24. At the least, I discovered no record in the course of my research. One can not argue that Pound was unaware of qualified women. For example, Florence Kelley, S.P.

Breckinridge, Frances Brown Taylor, Crystal Eastman, Florence Allen, and Frances Kellor all had law degrees. Miriam Van Waters was admitted to the California bar and served as a distinguished juvenile court judge. Van Waters was retained by Pound and Frankfurter as a researcher for the Harvard Crime Studies, but they did not apparently seek her services as a faculty lecturer in the classroom.

25. Pound to Abbott, 24 June 1918, Box 1, Folder 5, Ernst Freund Papers, Special Collections, Joseph Regenstein Library, University of Chicago.

26. Dummer to Pound, 10 July 1926; Pound to Dummer, 12 January 1927, A-127, Box 34, Folder 698, Ethel Sturgis Dummer Papers, Schlesinger Library, Radcliffe College.

27. Pound to Callahan, 28 January 1925, Box 1, Folder 12, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.

28. Pound to M. Johnson, 6 December 1944, Paul Sayre Papers, University Archives, Special Collections, University of Iowa.

29. Statement, "These Lawyers and Legal Scholars Oppose the So-Called Equal Rights Amendment," undated, Box 69, Folder 7, Roscoe Pound Papers, Harvard Law School Library. A draft of the statement, in the same location, is dated 20 September 1945.

30. McAllister to Pound, 12 July 1946, Box 69, Folder 7, Roscoe Pound Papers, Harvard Law School Library.

31. In 1942-43, Pound's sociology course included twelve students from Radcliffe. In 1946, seven Radcliffe students took the course. Class rosters, Box 83, Folder 6; Box 196, Folder 9, Roscoe Pound Papers, Harvard Law School Library.

32. Abbott Biography, Edith and Grace Abbott Papers, Abbott Addenda, Special Collections, Joseph Regenstein Library, University of Chicago.

33. Unsigned statement, undated, attributed to Willa Cather, Box 4, Folder Clippings, Nathan Roscoe Pound Collection, State Archives, Nebraska State Historical Society.



34. The few minor differences between the typescript in the Roscoe Pound Papers and the published version of Cather's character sketch of Roscoe Pound are primarily stylistic. There is a substantive distinction, however, in the wording of the penultimate sentences. Where the typescript reads:

He has ability enough, but he never got past the blue-ribbon sheepskin, "vos salutamus" stage.

The published version (Cather 1970, I: 122) reads:

He has ability enough, but he just seemed to quit growing when he graduated. He has never got past the blue-ribbon, sheepskin, "vos salutamus" stage.

## CHAPTER TEN

## WHO ELSE WAS "NOT A SOCIOLOGIST"?

How stupid to shape your life altogether  
by the handed-down, unless it has been critically  
re-examined of late and has passed the test!

-- Edward Alsworth Ross<sup>1</sup>

Introduction

This study documents that Roscoe Pound, a highly respected intellectual and an accomplished contributor to the sociological enterprise, "fell through the cracks" of the disciplinary history of sociology despite the advantage of being a well-published white male who occupied a prestigious academic position in one of the nation's most elite universities. That this should happen is a puzzle, and leads to the question, "Who else has been forgotten?" This chapter itemizes the structural factors that contributed to Pound's socially-constructed obscurity in modern sociology. These factors are then interpreted as

identifying "signatures" that may trigger recognition and further archival discovery of other significant but "forgotten" sociologists.

Given the preceding investigation and documentation, it is clear that Roscoe Pound was an accomplished sociological theorist, social analyst, and empirical researcher who paid his professional dues as a member of the American Sociological Society. His opportunities and achievements within the discipline of sociology are sufficient to generate both envy and admiration. He was a revolutionary thinker who fractured the received presuppositions in both botany and the interstices between law and sociology. As a mature scholar, Pound immersed himself in sociology and founded the American school of sociological jurisprudence. Yet, Pound's sociological work remains largely unknown within sociology. When Pound is recognized by sociologists, it is primarily for his accomplishments as a jurist, as the distinguished Dean of the Harvard Law School per se.

Why does Pound's work remain unread and uncited by today's sociologists? It could be suggested that Pound's work in sociology is obscure or hard to find, but this would miss the mark. Once one knows where to look, no great effort is required to verify his place in organized sociology. The resources of most graduate libraries are more than adequate to pursue the basic indicators. The

membership rosters of the American Sociological Society are found in that organization's annual Papers and Proceedings. The cumulative index to the American Journal of Sociology quickly locates Pound's articles among the pages of the premier forum of American sociology. His many books, filled with sociological insight, analysis, and methodological examples, are readily available -- if one knows to look in them. Indeed, "sociological jurisprudence" is a subject heading now used by the Library of Congress.

When one reaches beyond the basic data to consult archival materials, the documentation of Pound's role in American sociology is exponentially compounded. Through the archival materials presented in this study, the interdisciplinary linkage Pound forged between sociology and law becomes undeniably evident. One cannot effectively argue that Pound's work was obscure, minor, or inconsequential. Nonetheless, Pound is only rarely cited in the bibliographic liturgies of sociology. Somehow, we have received an unreliable account of sociological history that does serious disservice to Pound's disciplinary contributions. This is a puzzle.

The aphorism quoted at the beginning of this chapter advises that it is "stupid" to accept received knowledge without putting it to the test of periodic re-examination. Nowhere is this counsel any more applicable than in

sociology. The identification of "paradigms," "theory groups," and lists of "greats" in the sociological hall of fame need continuing scrutiny. Such lists, whatever their objective grounding in historical fact, are the products of social processes and thus subject to the forces of structural bias and hegemonic self-interest.

When reified in textbooks and doctoral reading lists, the received knowledge of disciplinary history delimits the field of "acceptable" sociological theory. It is not only that past theoretical ideas shape and justify the intellectual landscape of modern sociology, but also that particular theorists (and thus their ideas) have been selected for canonization by the writers of textbooks and the authors of bibliographies. Debates between idealists and materialists aside, it is equally true (1) that ideas do shape the work of sociologists and (2) that the ideational resources at our disposal have been shaped by structural and hegemonic social processes within sociology and the academy -- as well as by reasoned critique and scientific discovery.

The future view of sociology as a discipline and an intellectual project is potentially much richer and more diverse than the "received wisdom" of present-day sociology leads us to conclude. This inherently pragmatic insight is, however, brushed aside in the big time world of commercial textbook publishing and lost in the disciplinary politics of

academic sociology. By shedding our hegemonic blinders, we can see that the particular sociologists who have been canonized are by no means the only sociologists who could have been rationally selected. By looking closely at the sociologists who have been "forgotten," we provide our future sociology with a more complexly textured metatheoretical tapestry and a much broadened vision of disciplinary practice. These are resources upon which sociology can draw for renewal and vitality in the twenty-first century.

#### Toward a Generic Inquiry

In this study, I present a substantive instance of a potentially general conundrum: "How can a person with Roscoe Pound's sociological accomplishments become lost to sociology?" The preceding pages document the basic facts of Pound's case. The data explicated herein are useful to the continued examination and re-evaluation of Pound's contributions and status as a sociologist. More generally, however, my multi-level "frame analysis" outlines the intricacies of the archival research processes that are instrumental to the study and excavation of "unknown" sociologists such as Pound.

The puzzle at hand is not simply a unique inquiry about a single scholar. A general puzzle is suggested. Are there

other candidates, similar to Pound, waiting for "discovery" by modern historians of sociology? Are there other sociologists, highly visible to the society at large, who are invisible to sociology? Mary Jo Deegan argues convincingly that there are.

Deegan points to women, such as Jane Addams (Deegan 1988c), and to Black men, such as W.E.B. DuBois (Deegan 1988e), whose sociological accomplishments have been ignored or distorted for decades by practitioners of the very academic field that lays special claim to insights into the processes of sexism and racism. Generalizing from her discoveries, one strategy for the intellectual excavation of sociology is to look toward oppressed minorities, and ask, "Any sociologists here?" Deegan's (Forthcoming g) bio-bibliographical compendium on fifty outstanding women sociologists is an impressive demonstration of the productivity of this strategy.

Roscoe Pound, however, was never a member of an oppressed minority. His modern obscurity in sociology cannot be attributed to racism or sexism. He enjoyed a comfortable, upper-middle-class life. He was the definition of a successful, white, professional man: energetic, smart, able; Republican, Mason, protestant; Phi Beta Kappa, a Harvard man, literally an entrant in Who's Who?. The

conventional wisdom holds that the disciplinary contributions of such a man are not likely to be forgotten.

Is it not counterintuitive to ask, "Are there others like Roscoe Pound who have been forgotten by sociology?" If we answer that Pound's case was unique; then there is no generic puzzle. But, the factors that tentatively explain Pound's sociological obscurity also provide signatures that point to a pool of unknown depth filled with any number of candidates for further scrutiny and evaluation. Deegan's analyses of sexism and racism in sociology identify major structural signatures that alert researchers to the unsung work of women and racial minorities in sociology. What similar lessons can be learned from a study of Roscoe Pound's sociological activities?

### Structural Aspects of Pound's "Disappearance" from Sociology

Pound's present invisibility in sociology was hastened by (a) structural features of Pound's career, (b) the ways in which sociologists attribute status and professional legitimation to each other, and (c) the active hegemonic promotion of selected "stars" by the University of Chicago and its sociological historians. Taken together, the following factors obscure Pound's identity as a sociologist:

(1) Although Pound was an exceptional scholar, he did not earn a doctorate (or any degree) in the discipline of



sociology per se. Although he was extremely well read in turn-of-the-century sociological literature and was mentored by E.A. Ross, he was not the formal student of any "important" sociologist. Thus, histories of the discipline that identify the "heirs" of disciplinary traditions by attending primarily to formal student-teacher relationships necessarily omit Pound.

(2) As a mature scholar, Pound taught few graduate students in sociology per se. His active teaching career was well advanced before he offered his first graduate research course in sociology of law at Harvard at age seventy. There were few intellectual disciples who, as sociologists, had vested interests in citing, critiquing, or extending his ideas. Although Pound's work continues to fill a respectable column or more each year in Social Science Citations Index, the citations do not lead the disciplinary historian to sociology journals. Pound's work disappears when citation frequency by modern sociologists is used to measure the "importance" or "influence" of older contributions to present-day sociological theory.

(3) Although Pound frequently asserted his sympathy for the sociological perspective, and adopted it in his work, Pound identified the law as his primary professional affiliation. In a world marked by extreme disciplinary specialization, Pound's primary identification with the law

is tantamount to claiming that he was not anything else, botanist, sociologist, classicist, Civil War historian, Masonic philosopher, or otherwise. In terms of one's place in the chronicles of sociology, multidisciplinary training and accomplishment can actually be a liability unless one claims sociology as one's principal professional referent.<sup>2</sup>

(4) Pound reached the heights of success as a law school academic. There are literally hundreds of influential lawyers who knew him as a jurist and who wrote about him and spoke about him in that role. Pound is so often called a jurist in published biographies and reference works that even relatively close attention to the mass of published biographical sources, especially those in law journals, can lead (erroneously) to the conclusion that Pound was probably "not a sociologist."<sup>3</sup>

(5) Pound completed his graduate education at a school not ranked among the nation's prestige academies. The Schwendingers' (1974: 495) glib description of E.A. Ross' productive Nebraska years as having been spent in some nameless "elsewhere" is a relevant example. Although the University of Nebraska was an especially energetic center for sociology during the first decade of the twentieth century, Nebraska does not now "rank" as a premier school in sociological circles. In a further example, the historian Scifres (1954: 8) relied on sociologists' writings about the

discipline to assert (in her thesis on E.A. Ross) that, "Outstanding among early sociology departments were those at Columbia, Chicago, Michigan, Brown, Pennsylvania, and Wisconsin." The Lincoln campus disappeared, and thus Scifres made no reference to the fact that Ross completed much of his foundational work in Nebraska. Sociologists presumably understand the mechanics by which "prestige" is socially constructed, but sociologists are nonetheless slavish in their obeisance to perceived prestige rankings within the discipline. As a result, Pound's work at Nebraska and the Pound-Ross connection at Nebraska are ignored by status-bound disciplinary historians.

(6) Pound adopted a pragmatist, progressive sociological perspective. This orientation to sociology was pushed aside in the 1920s by the male Chicago school then led by Robert Park and Ernest Burgess. Pound's early work and reputation suffered (as did that of several progressive sociologists, male and female, alike) from the hegemonic disapproval of the new power elite in sociology. Progressive sociology was dubbed "not scientific," and hence "not sociology" in the new rhetoric of the 1920s. Descendants of the so-called "mainstream" tradition thus severely limit (if not excise) reference to such sociologists as Jane Addams, Sophonisba Breckinridge, Charles Zeublin, Charles Henderson, Edith Abbott, Albion Small, and Roscoe Pound. Pound never

abandoned his commitment to sociology as a perspective to be applied, and thus his work after the 1920s continued to be unacceptable to the descendants of Chicago sociology.

(7) Pound often labored "behind the scenes" as an organizer and manager of sociological research projects. Thus, his nationally prominent role as a Commissioner on the Wickersham Commission "covered" his quiet support of Abbott's projects for the Commission and his editing of Anderson's appraisal of the "Causes of Crime" studies. Pound's work on the Harvard Crime Studies was very much in the shadows. The final report of the Cleveland Survey of Criminal Justice was published with Pound's and Frankfurter's names on the title page as having "directed and edited" the study, but the work is rarely cited in bibliographies under their names (authorship is typically attributed to the Cleveland Foundation). It was also Pound's personal policy not to respond publicly to criticisms of his work. Thus he kept a lowered "profile" and avoided controversial rebuttals that might otherwise have attracted wider attention and comment in sociological forums.

(8) Views about what was "scientific" and what was not cut both ways. Pound was a highly trained natural scientist who eschewed what he considered scientific posturing among the new generation of sociologists in the 1920s and 1930s.

Pound, the credentialled botanist, was critical of abstracted sociological research well into the early 1960s. His views could not have endeared him to those who had (and have) vested interests in claiming that the methodological and theoretical "development" of modern sociology is cumulative and increasingly "scientific."

(9) Pound chose a sociological "specialty" that is not now popular among "mainstream" sociologists. For example, although Max Weber (1968a, 1985; Kronman 1983), Emile Durkheim (1983), and Karl Marx (Jessop 1980; Phillips 1980) wrote major statements on the sociology of law, that work is not cited with nearly the frequency of other works authored by these founding theorists. The sociology of law attracts relatively few American practitioners, and has been primarily associated with European theorists such as Nicholas Timasheff (1939), Georges Gurvitch (1942; see also Hunt 1979), Maurice Merleau-Ponty (Hamrick 1987), Georg Lukacs (Varga 1981), and more recently with Niklas Luhmann (1985), who are not widely known nor as yet highly valorized in American sociology.

(10) In terms of disciplinary memory, Pound's sociological publications are problematic. Although he published in the American Journal of Sociology (Pound 1912; 1913b; 1917) and Social Forces (Pound 1923a), he did so before these journals were indexed by Sociological

Abstracts. His "theory of interests" was buried in the Papers and Proceedings of the American Sociological Society (Pound 1920b). The publication of an updated version of his "theory of interests" paper in the Harvard Law Review (Pound 1943b) is widely available, but not likely to come to the attention of sociologists. His symposia chapters on sociology of Law (Pound 1925b, 1927, 1929b, 1945c) are not uniformly indexed in library catalogs. Nor can reference to his nine essays in the Encyclopedia of the Social Sciences be found in the card catalog. Pound never wrote a book with "sociology" or "sociological" in the title even though there is often a wealth of sociology in his books. He never completed the manuscript for Sociological Jurisprudence, and thus never received Albion Small's published endorsement. The early corpus of American sociological thought cannot be reached adequately through computer searches of "on-line" bibliographic services, and students who resort to these services exclusively are sorely disadvantaged and condemned to ignorance of Pound's work.

(11) Although deeply interested in sociological ideas, Pound chose to spend his most productive and energetic years at a school that did not have a department of sociology until the 1930s. Thus, Pound was not part of a day-to-day community of sociological scholars as he was at Nebraska and Chicago, and could have been at Wisconsin. His contacts

with Pitirim Sorokin and Talcott Parsons (two more colleagues who became Presidents of the American Sociological Association) did not begin until after Pound's seventieth birthday. If the history of sociology at Harvard is defined with the arrival of Parsons and Sorokin, Pound's best work is missed ipso facto.

(12) Finally, Pound's sociological disappearance was abetted by hegemonic processes within the discipline of sociology. Importantly, his work was not incorporated centrally in the self-replicating, self-promoting citation network of Chicago sociology. The several factors itemized above go a long way to explain why his career was vulnerable to erasure by the hegemonic propaganda machine at Chicago. But, vulnerability is not the whole story. The "machine" politics of the male Chicago school can promote obscure, "hard-to-find" sociologists such as L.J. Henderson, for example, if it so chooses. That it chose not to remember Pound is (to use Pound's term) an example of "institutional waste" and a loss that needlessly narrows the intellectual assets of the discipline.

Reading the list above, one might cynically conclude that Pound made too many "mistakes" in his professional "game plan" as a sociologist. But, Pound did not approach sociology with a "dress for success" mentality. Pound sought out sociology at the University of Nebraska because

of its intellectual excitement and its utility for launching a major revision of juristic thought in America. It could be said that Pound did not "do the right things" to advance his sociological career, but such a judgment would be a damning indictment of modern sociology. When "peddling piffle" and "doing the right things" to advance a career in sociology become the operative definition of sociological success or take precedence over intellectual curiosity and commitment to social justice, then sociology has lost its way and sorely needs the cooperative insights and patient ministrations of its more thoughtful and humane founders.

### The "Signatures" of "Forgotten" Sociologists

This study closes with an inventory of pragmatic suggestions for future research in the history of sociology. There is always more work to be done on the historical aspects of sociological scholars who are already well-known within sociology, although one can at times wonder, "Does the world need yet another monograph on Durkheim, Weber, or Marx?" Must we add yet more volumes to the scores of histories on the Chicago school when so many other departments remain unchronicled by even a single book? David Riesman (1962: 54-55) once observed that most sociologists "are unwilling to do what the physical scientists take for granted, namely, to undertake work that



has very little chance of producing positive results, and then to report any negative findings." It may be is risky in terms of instant professional payoff in sociology, but there is much work to be done to unearth the unknown sociology that has been obscured by racist, sexist, and hegemonic practices in sociology.

Excavating the unknown, the unwritten, or the unrecognized in the history of sociology requires reversing the conventional wisdoms of sociological research. The inherent liminality of such a strategy makes it immediately suspect to those who do not fully appreciate the playful element in scientific research. Phenomenologically, one must bracket one's presuppositions as to who is and who is not a sociologist. One must look not to where citation studies and literature searches reveal a feast of prior studies. Rather, one looks in the opposite direction, to where conventional wisdom promises a famine.

Archival research is a proven strategy for tapping into the sociological activity and collegial networks of sociologists who are not easily traced in standard literature searches. Initial results may seem relatively meager, and one need not hope for an undiscovered cache of letters in an out-of-the-way archive. There is much to review within the major archival collections through which biased and hegemonic researchers have already searched. The

general features of archival research are outlined above (Chapter 2). The following, however, is a list of specific suggestions derived jointly from Deegan's analyses of sexism and racism in sociology, and from the present inventory of structural factors in Pound's erasure from the disciplinary record of sociology:

(1) When reading an archival collection, be especially alert for materials relating to persons of minority status, specifically: women, persons of color, and members of oppressed minorities generally.

(2) Examine carefully the work of scholars in schools outside the currently acknowledged "prestige" academies. Be particularly alert for non-Chicago sociologists and their collegial networks.

(3) Be alert to sociological achievements completed outside the academy. For example, in business, philanthropy, or government.

(4) Remember that professional training in a discipline other than sociology does not negate the potential sociological import of a scholar's work.

(5) Look for instances of mentoring in sociology through other than formal student-teacher relationships.

(6) Do not be immediately dissuaded by claims to (or attributions of) professional identities other than sociology.

(7) Consider the possibility that a scholar may have "multiple" professional identities.

(8) Documentation that persons did not closely identify with sociology at a particular time does not mean that they did not identify with the discipline at some other point in their careers.

(9) Advocacy of views unpopular among or critical of the dominant disciplinary perspectives in sociology may signal the work of a sociologist that was hegemonically suppressed. Be especially attentive to the possibility of unpublished monographs and rejected journal articles..

(10) Be alert to behind-the-scenes organizational and administrative "shadow work" (Illich 1982) that facilitates teaching, research, and publications by others.

(11) Search specifically for publications of sociological import that are not indexed by the standard on-line bibliographic services. Older sociology journals provide a place to start, but do not ignore interdisciplinary social science journals or those devoted to social work, social reform, or progressive political agendas. Many early sociologists contributed signed articles to a variety of encyclopedia projects. Older anthologies and collections of essays and research reports may prove informative. Many universities supported a

"university studies" series in which sociologists often published.

(12) The fact that a school or university had no formally organized department of sociology does not mean that sociological activity was absent from the campus.

By recognizing, evaluating, and following up on signatures such as those outlined above, the probability of locating unrecognized sociological activity is increased. The results, in terms of the history of sociology, will often be "negative." These recommendations must be understood as a long-term strategy. The exclusionary consequences of decades of structural inequity and sociological hegemony are not easily or quickly recovered or repaired.

### Conclusion

The recovery of unknown or discounted sociologists is an important epistemological task in sociology. It can be asked, "What difference does it make that the sociology of Roscoe Pound is recovered?" The rediscovery of Pound's published work as sociology has the same potential import for sociology that finding a trunk filled with unpublished manuscripts authored by Emile Durkheim, or Max Weber, or Karl Marx would make. In a hegemonic system, discounted or little-known sociologies are not ipso facto worthless,

unproductive, or uninteresting. They are simply not cited, and not reproduced. Evaluation of their intellectual import for modern sociological theory and practice is quite a separate matter.

As theorists, we can ask, "What if?" What if Pound had become the theorist of choice in a hegemonically dominant school of sociology? What would that sociology look like today? Using Pound's work and the rules of inferential logic, that alternative sociology can be reconstructed. Asking "What if?" as a theorist is not like asking "What if?" as an historian. As theorists, we can reconstruct alternative sociologies based upon the archival recovery and intellectual evaluation of theories discounted and undervalued by hegemonic factions in sociology. These recovered intellectual systems, when fully articulated, become alternative intellectual antecedents for the sociologies for today and the future. This, ultimately, is the promise and hope of the history of sociology.

### Notes For Chapter Ten

1. More than six-hundred of Ross' pithy aphorisms are found collected in his "Capsules of Social Wisdom" (Ross 1948), a pamphlet printed and distributed by Social Forces.

2. I have encountered this bias firsthand (particularly during employment inquiries) with increasing frequency as I approach the completion of my second Ph.D. Sociologists presumptively assume that my earning a doctorate in sociology means that I have abandoned geography, the field of my first doctoral studies. The manifestation of this presumption appears in the frequently-asked double-bind question, "Why did you leave geography?" Geographers, in general, take a more catholic attitude, evidenced in variations on, "What a good combination of fields, you must find it interesting?" Another thoughtful question by geographers is, "In what way does sociology inform your geographical perspective?"

3. Because the International Encyclopedia of the Social Sciences is such a useful repository of sociological knowledge, it is disconcerting that Edwin Patterson's (1968) biographical sketch of Pound in the Encyclopedia stresses Pound's contributions to jurisprudence while failing to mention his membership in the American Sociological Society or cite his AJS publications.

## APPENDIX A

U.S. GRADUATE COURSES IN SOCIOLOGY, 1893-1894<sup>1</sup>School

Instructor(s)

Course(s)

Bryn Mawr

Franklin H. Giddings

Principles and modern theories of sociology.

Chicago

Albion W. Small

Methodology and bibliography of social sciences.  
Seminar in psychology, ethics, and sociology of  
of socialism.Province of sociology and relation to special  
social sciences.

Social Psychology.

Problems in social statics.

Charles R. Henderson

Seminar in Social organizing for promoting  
social welfare

Social Institutions for organizing charity.

Social treatment of dependents and defectives.

Criminology

The family

Non-political and non-economic social  
institutions.Methods of promoting social welfare by voluntary  
organizations.

Marion Talbot

Seminar in sanitary science.

Chicago (continued)

- Frederick Starr  
Laboratory work in anthropology.  
Physical anthropology.
- Edward W. Bemis  
Some phases of comparative sociology.
- Gerald M. West  
Applied anthropology.

Clark University

- A.F. Chamberlain  
General anthropology  
Folklore and mythology  
Life and education of children among primitive  
races.

Columbia

- R. Mayo-Smith  
Communistic and socialist theories.
- Franklin H. Giddings  
Sociology.  
Crime and penology.

Cornell

- W.F. Willcox  
Social problems.  
Social science (with Prof. J.W. Jenks).

Harvard

- F.W. Putnam  
Course in special training in archaeology and  
ethnology.



Johns Hopkins

- E.R.L. Gould  
Current social problems.
- Amos G. Warner  
Charities and their administration.
- M. Bloomfield  
Ethnographic history of Indo-European peoples.

Michigan

- F.M. Taylor  
Land problems.  
Socialism.  
Industrial history of the U.S.  
Social philosophy.

Pennsylvania

- Daniel G. Brinton  
Courses in archaeology.

Yale

- William Graham Sumner  
History and development of modern industrial  
organization.  
Anthropology.  
Social science.

Note for Appendix A

1. Committee of the Graduate Club of Harvard in Cooperation with Committees of Similar Clubs at Cornell, Johns Hopkins, and Yale (1893: 51-52). A possibly hegemonic list, but one that shows Chicago's lead in sociology offerings among the major universities at the time. Leland Stanford University posed a west coast challenge to Chicago's lead when Amos Warner and Edward A. Ross were hired in 1893 to join George E. Howard who was hired in 1891. This potential fell in ruins, however, and the University of Nebraska picked up the

pieces. Warner fell ill and died in 1900. Ross was fired by Stanford in 1900, and Howard was forced to resign over his support of Ross. Ross went to Nebraska in 1901. Howard went to Chicago and then joined Ross in Nebraska in 1904. Lucile Eaves, a Ross-Howard student, left Stanford and came to Nebraska in 1908. Hattie Plum Williams, a Howard student, joined the Nebraska faculty in 1915. Hutton Webster and Joyce O. Hertzler were Ross students and joined the Nebraska faculty in 1907 and 1923 respectively. Nebraska had the ingredients needed to create a major sociological dynasty.

## APPENDIX B

### A PARTIAL LIST OF TYPES OF ARCHIVAL MATERIALS

Archival materials in "manuscript collections" of potential interest to historians of sociology exist in a surprising variety of forms even though most reside comfortably in file folders in archival storage boxes and can be easily photocopied. The value of the various forms listed below is not intrinsic, but relative to the nature of specific research projects and the questions asked. The various types of archival material can be organized in several different ways. The organization and interpretation of data gathered from archival materials is explored in Chapter 2 of this study. The list of forms below is based on personal inspection of archivally-based projects utilized in the past three years to study the work and lives of several scholars and intellectuals, including: William Z. Foster, Joyce Hertzler, Roscoe Pound, Edward A. Ross, Mari Sandoz, Hutton Webster, and Hattie Plum Williams. I have no doubt that future research will add considerably to the impressive variety of forms already documented below.

The items encountered in manuscript collections are typically linguistic in character, and almost always take a written, printed, or cartographic format. Other materials

may also reside in academic and historical archives, including tape recordings, paintings, photographs, clothing, sports equipment, and all varieties of personal possessions. Nonetheless, the variety of written and printed materials is impressive.

### Types of Materials

Newspapers	Diaries
Correspondence, general	Correspondence, confidential
Love notes	Greeting cards
Organizational records	Interview transcripts
Memoirs	Ledgers
Photographs, portraits	Memorabilia, various
Calling cards	Telegrams
Guest registers	Paintings
Maps	Autographs, inscriptions
Rare books	Personal libraries
Marginal notes in books	House organs, newsletters
Alumni records	Annual reports
Uniforms	Initiation protocols
Minutes of meetings	Indexes, card files
Inventories	Drawings, house
Magazines, clippings	35mm Slides, Lantern slides
Stereopticon cards	Questionnaires
Motion pictures	Newspapers, clippings

Organization letterheads	Tickets, ticket stubs
Invitations	Programs, meetings, concerts
Directories	Autobiographical fragments
College transcripts	Unpublished manuscripts
Scrapbooks, collections	Broadsides, posters
Diplomas	Certificates
Citations	Leaflets, brochures
Picture Postcards	Lists, shopping, etc.
Envelopes with postmarks, return addresses	Hotel stationary
Audio tape recordings	Court Records, depositions
Wills, deeds	Reading lists
Book reviews	Clipping service files
Student's papers, projects	Letters of reference
Gradebooks	Lecture notes
Original field data	Transcriptions of letters
Verbatim transcriptions of meetings, interviews	Vitae, resumes
Dossiers, topical files	Poems, quoted and original
Doodles	Orations, speeches
Itineraries	Research plans
Unidentified fragments	Censored documents
Bills, receipts	Budgets, appropriations
Genealogical charts	Graphological analyses
Membership lists	Tax returns
Canceled checks	Testimonials

Book advertisements	Book dust jackets
Membership cards	Medallions
Old examinations	Address books
Pornographic materials	Galleys, proofs
Verbatim class notes	Vacation journals
Telephone logs	Attendance lists
Travel flyers	FBI files
Journal renewal notices	Health, dental records
Exchanged correspondence, enclosed in another letter	Grant requests and proposals

## APPENDIX C

## POUND'S 1892 SAND HILLS BOTANICAL EXPEDITION

In 1892, Pound organized a two-person expedition to collect botanical specimens in the Nebraska Sand Hills region. The following extracts from letters written by Roscoe Pound to Omer F. Hershey (a friend from Pound's 1889-1890 student year at the Harvard Law School) outline the events of Pound's botanical trip with Jerad Smith into western Nebraska during July and early August 1892. The original letters are in the Paul Sayre Collection, University Archives, University of Iowa, Iowa City. Brackets [ ] indicate questionable wording or illegible copy. Elipses indicate omission of material not directly relevant to the Sand Hills expedition. A much abbreviated account is found in Sayre (1948: 66). The scientific results of the expedition were published in Smith and Pound (1893). The cumulative effect of Pound's botanical work resulted in the landmark ecological study by Pound and Frederic Clements (1898a) The Phytogeography of Nebraska.

June 29, 1892

(Lincoln, Nebraska)

As there is no such thing as a tree in the Sand Hills, your remark about the good you would do me by insisting on my camping under every one I met is amusing . . . . your "ignrance of our institooshuns is astonishin." . . . .

There aren't more than two or three post offices in our road in the Sand Hills. There are none in our road. But we shall try to digress and take them in (they are 50,000 miles apart) to send home material and lighten our baggage. I think I shall be able to send in my weekly remarks. I am confident that it will do me a hill of good. Anyway I drew my warrant for expenses today and am in for it. Start probably the 7th of July. Go to Alliance and walk over 200 miles to O'Neil. Visit the lakes (?) in Cherry Co. If you have a map you can get an idea of the thing. But enough of this. It will be a taste of roughing it which I think will do me good. I am not entirely new to the business -- have done similar things on smaller scale before.

July 3, 1892

(Lincoln, Nebraska)

I shall start two days sooner than announced . . . . I have made all needful preparation -- revolvers, ammunition, knife (of formidable proportions) leather leggings etc. and in heavy [marching] order look quite dangerous.

July 19, 1892

(Johnston, Nebraska)

Here we are at a P.O. first time since we started. Here is a sod house . . . . We are having a bully time but lots of hard work. Absolutely no population for miles. Hot as -----.

We are behind time four days -- lost two by rain and two by horses running away, but have made up half today.

July 28, 1892

(Johnston, Nebraska)

Here we are at civilization at last and with only about 80 miles left -- plain going and the luxury of a road (such as it is, you wouldn't call it one).

Am sitting in a chair for the first time these many days. All well and have had good luck. As quick as I reach Lincoln will write fully and explain all . . . . The region is worse than I had an idea of -- this is the second accessible P.O. and out of the work officially planned.



August 7, 1892

(Lincoln, Nebraska)

I only got home yesterday at 1 P.M. and this (except last night, when I was too sleepy to stay up) is the first chance I have had to write anything of any length since we left Lincoln. When we reached O'Neill last Monday we found that it was utterly impossible to sell our horse cart and harness as everybody knew we wanted to. To stay two or three days at O'Neill would be very expensive so we decided to ship our goods to Lincoln and drive across country to Lincoln. Packing took a good deal of time and as time was very valuable from then on we started off without informing our friends -- I wrote just a line to Father -- had no cards left or would have informed you. Bad roads in Antelope Country and misdirection near Valparaiso lost us about half a day. We should have reached Lincoln Friday night.

My head is still in too chaotic a condition to write -- I have been eating and sleeping all day . . . .

Regard this as only a note to tell of my arrival -- I will get to letter writing presently . . . .

There are a great many things about the expedition that will amuse you, and I think I shall give you an account of it all as soon as I can get to it. Now I will only say that it was hard work, the hardest I ever did from sunrise till from 9 - 10 P.M. every day, that it has been of considerable scientific value and that I got home dirty greasy ragged and in the very best of health. The last three days we were at it from 4 A.M. till midnight and got only about 3 hours sleep a day. I have to make up for a day or two yet . . . .

You will notice several post offices in our path on the maps. They are sod houses along the north and south stage road from one R.R. to the other. In going 60 miles the country is such that the road has to zigzag about 150. These sod houses (some ranches) are (when not deserted) P.O.s. The stage goes through once a month. At Pullman (so named from owner of ranch) we were told that the stage was due in three days. Evidently the P.M. had lost count, as our letters do not seem to have started for three weeks after we were there.

August 9, 1892

(Lincoln, Nebraska)

I have a little leisure now which I may as well devote to enquiring "where was I at?" and going on where I left off. I am still eating and sleeping for the most part. Have only just begun to get matters straightened out here. Last night I was obliged to show myself to the public (I am still a curiosity to look at, though about fifteen shades lighter than when I landed) and got no time to write. I hope to be left to myself tonight. As there is not likely to be anything in particular to do now (5 P.M.) till dinner time, I may as well devote my reading time (Lord knows where or what I was reading!) to an account of myself and what I have been doing for the last month . . . .

July 5 at 12:20 P.M. left for Alliance and got there at 2 A.M. We sent our cart up some days in advance. A classmate (Smith and I are '88 men) was on the train and got off at Alliance with us. We had to wait in the depot till 7 A.M. and mount guard over our baggage. At 7 A.M. we got a place to put it got breakfast and were ready for the fray. We got our cart and when ready to set it up found that the bolts had all been left behind. We procured the services of a blacksmith and about noon the cart was up. Meanwhile we examined critically all the horses in Alliance and about noon agreed to take one for \$40.00 -- just ten dollars more I learned later than its owner paid for it the day before. Meanwhile also we had laid in a spade hatchet frying pan etc. After dinner we paid our money and all Alliance looked on and held its breath while I drew a bill of sale which was duly signed witnessed and delivered. Smith had brought a harness and we unpacked our stuff, Smith put an addition on the cart and by 4:00 all was ready and we started Smith walking behind and driving, I walking everywhere collecting. We had on the cart two presses of 200 sheets each, one half press for dried plants, one for wet sheets, a shelter tent with no fly, stakes, two poles, a canvas sheet to cover all in case of rain, a huge satchel which we called the telescope, three grain bags containing (1) grub, to-wit 50 lbs flour, (2) 15 lbs beans, 2 bacons, coffee, sugar, etc. also frying pan, 2 tin plates, 2 knives forks and spoons. This we called the bean bag. (3) Clothing ammunition etc. called from nature of its contents the "free for all." Besides we had roll of 2 blankets and one quilt and two rubber coats. Spade, 2 pails, hatchet and jug.

We went about 6 miles and camped. I went in a sod house for water.

Next day we were up at 4:00 but pressing kept us busy till 9. when we started crossing Box Butte Co. and stopping on the edge of Sherridan Co. at 6 on account of threatened rain. We camped on shore of a fine lake -- fine to look upon but water was alkaline. Just after supper it began to rain. We had little fuel and only by accident found that tumble weeds and the manure of the range herds are the native fuel. From this time on, we depended on that and sand cherry roots entirely. It rained all night and all the next day, keeping us inside in very narrow quarters as tent was only 42 inches high. Smith did get out and shoot a duck or two -- we had duck or snipe or curlew or prairie chicken or all of them about every night. We passed 23 deserted houses up to this time and perhaps 4 or 5 inhabited.

Next morning it was clear and we were off, passing through the magnificent lake valley with fine lakes and into the sand hills. Throughout the western end of the region wet valleys run east and west connected by short divides of very bad sand hills or by long dry valleys. The wind is always S.E. during the day. At night it shifts and clouds come up and it may rain a little. It dries in a flash. The sand holds no water. For several days we went on camping by lakes and using lake water. One day we waded through a long marsh to Joy's ranch where we saw human beings once more. We were [illegible copy].

The horse flies are thick all over the hills. Some times I would have to fight them off Moses (the horse) while Smith drove. They bite right through ones clothing, the blood flows, clots and rubs against your clothing and makes a bad sore. The flies bothered us so that like fools we went on beyond the ranch and lake and into a dry valley. It was so long that we had to stop and camp in the middle of it and dig for water. Jerry got very good water about 4 feet down. Next morning we filled our jug from it and then used the well as a bath tub. The flies finally drove us wild here. They were not so bad for some days after. Here let me describe a days labor. Up at 4:00 (sunrise there). Smith got breakfast -- makes bread, coffee, cooked game if any, if not bacon. I oil cart, pack tent etc. Breakfast about 5:30. Continue packing and start about 7:00. He drove and I collected, carrying case knife etc. If he saw game, I held horse if in the neighborhood, or he unchecked horse and let him eat and went after it. Thus we went on, going by sun or our compasses -- for there are no roads except close to ranches where the rule is two cowpaths make a road -- till about 2 or 3 P.M. Then or as soon after 2 as we reached [illegible copy] . . . to dig for it, we

[lamiated] Moses, unpacked, set up tent. I put plants in press, changed other press and dried sheets taken out day before. By hard work I could generally do this in 4 - 5 hours. Smith would meanwhile rustle up water and fuel (a good 2 hours job) and get supper. After dark I could help him and by 8 or 9 P.M. we would have supper. After supper we would spread the canvas over the presses, put up a rubber coat for a fly and between 9 and 10 turn in. If the mosquitos were bad, we would take turns -- one keeping awake and feeding the flames with manure (called by the cow boys "chips" -- hold fire a long time and make a great deal of smoke) to keep up a smoke while the other slept. This was our every day program with little variation. Two meals a day was the invariable rule.

August 14, 1892

(Lincoln, Nebraska)

"Where was I at" anyway? My recollection is that I had just left Joy's Ranch -- on that assumption I will begin. From our camp beyond Joy's we had to go south as the hills east were impassible. The hills south were bad enough but we were told to go S.E. to Wilson's ranch and that from there on we could go N.E. (our direction). The trail (cowpath i.e.) lay over the most abominable stretch of sand hills I had dreamed of. (We struck several worse afterwards). For 6 miles we had to push on the wheels most of the way up hill and down. The formation of the whole region is peculiar. It is crossed by E. and W. lakes long and narrow or by dry valleys. The lakes are at the east of wet valleys. Between the valleys are divides of low sand hills. The sides of the valleys are steep and high sand hills -- often 300 feet -- or more, with hugh blowouts. A blowout is a great crater blown out of a hill by the wind. Well we went over this divide for 6 miles or so and came out in a magnificent valley running N.E. with a fine lake. The valley was not as large as many we saw later and the lake smaller and ranch smaller, but the hills were so high and steep, and the shape and lay of the valley such as to make it the finest sight we saw. The trail ended here and we went on across country over a long divide. This divide was dry and we had a hot time of it. The heat was intense -- the hottest day we had -- and we drank all the water out of our jug and couldn't find more. About 3 we fastended Moses to a sand cherry root (sand cherry grows about 6 in. high) and I went east and Smith north after water -- both exhausted. We didn't find any and nearly got lost. One hill is so like another that one cannot find his way back half a mile unless he is very careful. Finally, Smith found

a suitable place to dig and while he dug I unpacked and put up the tent. While he was digging 100 yards off (we camped on high ground to avoid mosquitos and horse flies) a rain came up unexpectedly and made me hustle as I ever did to get the presses inside. Just as I got through and Smith came up, it stopped and in 15 minutes was so dry that I got out the sheets used the day before and dried them and changed the presses. Meanwhile Jerry's well had filled with water which on inspection proved to be indubitably alkaline. We were both about ready to drop, but he managed to dig another only about 3 ft deep about 100 yards off which gave good (enough) water. So we used well no. 1 for a bath tub. Next day we were all day on the dry divide or in a dry valley, but a well gave good water. The day after we came to the Ox Yoke ranch on the Elkhorn Valley Lake 2 miles from the Cherry Co. Line. The lake is 5 or 6 miles long by 1/2 to 1 mile wide. We went on into Cherry Co. and camped on the east end of the lake where we had to sit up alternately by the fire and keep up a smoke on account of mosquitos. We learned that there was a trail S.E. to the [B&N] road at Hyannis 35 miles -- this becomes relevant hereafter. We went on N.E. through a wet valley full of small ponds (1 day) past another and into a long dry valley. We found a small springy pond here and camped. Next day (July 16 memorable) we went on still in the same dry valley. We found afterwards that it was about 45 miles long. (The county is 96 miles long).

Now our beast Moses was so named for his intense meekness. He was to all appearances as innocent and meek as could be -- and we had come to believe and trust him considerably. Smith (who has handled horses a great deal) had been in the habit of letting moses stand unchecked and unfastened (what could he be fastened to anyway?) and letting him nibble at the grass while he hunted wherever game was in sight and I not in reach. The man we bought him off told us he would stand all right this way. On this eventful day about 10:30 I was in a blowout about 300 yards off and Smith seeing a small pond full of ducks halted Moses and unchecked him and proceeded about 100 feet to the pond. He shot two ducks and waded in for them. By this time I came down and joined him -- I gathering algae in the pond while he put on his shoes leggings etc. When we came up to the knoll on the other side of which Moses had been stationed he was no where to be found. We dropped our stuff and Smith went west and I east beating up the low hills and valleys thinking he had started on for better grass. After wasting half an hour or more this way and fifteen minutes to half an hour finding our way back, we struck his trail --

marks in the sand -- where he had turned around and started back over our trail coming. We could see our tracks coming and to the left his going in the sand. Everything that we had was on that cart speeding for Alliance. I had with me a pocket flask of whisky, my collecting case, note book, knife, compass, pocket book, and revolver. Jerry had his gun, collecting case and knife. His pocket book and money were on the cart. He had no ammunition. He also had two ducks. We both had on light overalls -- our trousers were in the cart -- but fortunatley had our coats on. We started back following the two trails as fast as we could walk. At ponds along the trail we could see where he had stopped to drink. To our satisfaction we found nothing spilled from the cart. We went on from a little after 11 A.M. til about 7:30 P.M. when it began to get too dark to follow the tracks and we had to look for water -- being extremely thirsty as we had walked between 25 and 30 miles on a hot day with very little water. We strayed off from the trail over an old fire guard till we struck a nice lake in a small wet valley. We got a drink and as a rain seemed to be coming struck for a blowout and by good luck finding an inexhaustible supply of sand cherry roots built a fire. We had had nothing to eat since 5:30 (about) that morning and were infernally hungry. Smith dressed one of the two ducks (he had kept fairly well in the case) and cooked him on the end of a sand-cherry-root-spit. This was all we got for supper. Fortunately it did not rain, but there was a howling cold N.E. wind and a heavy mist which wet us considerably. We slept a little by the fire shivering most of the time. At 4:30 we held a council of war. It was misting badly and threatened rain. We had wandered far to the north of our trail in search of water and had grave doubts of our ability to find it. We had no notion where we were. We thought we would try to find the Ox Yoke ranch and there Smith could get a horse (I could hire it and he ride it) and strike out in pursuit. But this didn't seem very feasible as our goods were likely to be scattered to the winds. Besides we had small hopes of ever reaching the ranch -- as it is largely a matter of chance -- the valleys running parallel -- if one strikes the right lake. Our plan was to go straight south trusting to luck and knowing that the R.R. and civilization were about 45 - 50 miles south. We thought we could keep up till we struck the R.R. and then go home. The night was the roughest toughest and most abominable I ever passed. You can't imagine the thing. No blankets -- overalls cold as the devil, mist, hungry as could be and tired. But we were mighty game just the same and took it remarkably cool, if I do say it. We cooked the other duck as before and called it breakfast. We then struck south at about 5 A.M. The

walking was bad as there were hard sand hills to climb and it was dark and misty. About 6:00 we were pleased to find a cowpath. Cowpaths are always welcome for they lead to water every time or else to a ranch -- generally from one to the other. Following it we came about 6:30 to the Elkhorn Valley Lake! We were mighty pleased at this and soon after found unmistakable signs that Moses had passed, for near the site of our camp of 3 days before we found our canvas sheet used to cover the presses. As we went on tent poles, parts of presses etc. Well at last we got to the ranch and there found Moses -- stopped by cow boy the night before about the time we stopped for darkness. They gave us a good breakfast at the ranch and at 9:30 we hitched up and tied on our things -- most of them still in the cart and went back. We found (I abridge here because I am quite sure I went over it to you before -- but not perfectly so because I have had to supply the loss of my note book from memory and can't remember what I wrote hurriedly in the office) everything but one tin cup, and my spectacle case blue glasses and tooth brush. We went on beyond our days journey of three days before and going at our best rate too. It had turned hot and clear about noon and we dried things out and rested our limbs. Next day was uneventful. Day after we got to end of the dry valley and into a wet one where we found a lake, ranch, and fine spring and there a P.O. was 6 miles off. We went on through abominable hills to Brush Lake the head of the north fork of the Loup to Pullman -- to wit one sod house with say 15 more in a radius of 10 - 12 miles (liberal estimate). Here we wrote cards to our parents and friends -- I put yours in an envelope and Jerry did the same for a certain young lady. The Mosquitos (I give them a capital) raised the unmentionable that night. Next day we were directed to a short cut to "the falls" reputed 12 miles off where there was a trail to "Kennedy!" We went over the worst lot of sand hills we saw on the trip. Absolutely barren and abominable generally. Camped on banks of pond near the Loup. As usual every night it threatened rain but only misted -- but I had to hustle with the presses. Next day we crossed the Loup -- magnificent cold clear water -- and went along for some distance over fair country. A Swede about 1 P.M. who has a tolerable farm in the valley (sod house of course) told us to cross back and go on 5 miles and we could find the falls and the trail to Kennedy. We went on 15 or more and found no trail. There were small fa'ls all along the river but no crossing place. Finally we stopped for fear of rain and camped. A slight rain and wind did nothing worse than make me hustle to cover the presses during the night. Next day we made a portage of the Loup near the camp and Jerry got a huge dose of poison ivy. I am

not susceptible fortunately and got off easy. We thought we would take a day off, but after pitching the tent, the state of the presses (I had botanized a good deal that morning and pressed nothing for two days before) kept me at work till supper time! Next day we went over a very difficult divide between Loup and the Gordon -- very hard work. Sunday we reached the Gordon and as it was unfordable went on south side abandoning the trail (which we had only found a short time before) and came to the P.O. of Kennedy -- only we were on the other side. Kennedy is a sod house of course, but nearby is another sod house with a cross on it -- a mission where a preacher comes from Valentine once a month. There are 12 -15 people about the valley to whom he preaches (I suppose). We tried to beat our way east toward Ainsworth, but the conformation of the country was such that we did not succeed. I was taken sick the first day out and when we struck a trail about 5 (I guess) rode a mile or so till at last we struck a small pond containing stonewort, a sure sign of good water. We were very glad to get to this, as I was weak and Jerry tired and it was outrageously hot. Next day we tried to go east but failed and going N.E. came to Dad's Lake -- a valley full of water -- a magnificent sheet of water and the largest lake in the State probably. We were now in the lake region. Pelican Lake and [Marsh] Lake (among others) we passed. From a hill near Pelican Lake 24 good sized lakes are visible. Here we saw a large number of "free claims." We went over to Hanna's Lake -- three lakes end to end in a wet valley -- 29 miles from Johnstown. Camped near the first lake some miles from the ranch. There are two ranches owned by brothers -- one at each end of the valley. Johnston is 24 miles from east end. We had to stand guard all night to fight off droves of horses. (Escaped and wild. They get off before they can be branded and run wild -- belonging to nobody. In the morning I went into the lake after water plants and while coming out a cold north wind came up suddenly. It was cold as ice and as a result I got a frightful cold. It rained just as we got started and for about an hour thereafter we went on making tracks for Johnstown -- with the tarpaulin over the cart and rubber coats on. About 4 o'clock Alliance time -- 5 Johnstown -- time changes somewhere here rain came up -- hard this time. We were in a bad fix. Fortunately we came to a house that was not deserted -- we had passed any number that were -- and got permission to put our presses in the barn -- and finally in the house. In a hard rain we pitched the tent and got our stuff inside and built a fire. (I had by good luck put on a lot of boards from a deserted house on the way.) We got supper and went shivering to bed -- for it was cold. Next morning we dried out -- hot clear



day -- and were delighted to hear a R.R. whistle. Johnstown was 5 - 6 miles off. We got there at noon over hilly road, and got dinner at the hotel (?!). Here we ate enough for 20 men (bacon beans and bread) to the astonishment of the damsel who waited on us. She would go outside and look in the window -- pretending all the time not to be looking -- till she saw we had cleaned everything up, when she would come in and fill everything up again. We shipped all the plants we could to Lincoln, wrote cards to our parents and friends . . . . At 5 P.M. we started on. Three not very eventful days of hard work brought us to O'Neill -- the end of our journey we supposed.

The rest I have told -- how and why we drove home across country. One thing I ought to mention. The day we drove from Neligh to St. Edwards we stopped at Albion to get some grub as we knew we would be going till late and were hungry. Jerry bought some beef steak off a butcher there and when about 9 P.M. hungry as blazes we got ready to cook it, lo and behold it was everlastingly and hopelessly spoiled. The scoundrel saw we were two jays passing through and put off his old spoiled dog meat on us. We had mighty little to eat that night.

We were truly a spectacle when we reached Lincoln. Our clothes were in the last stages of raggedness, we were tanned almost black, dirty greasy and armed to the teeth. A week at home has made me 15 degrees -- 25 degrees lighter. I got lighter in three or four days. I still have an enormous appetite -- am sleepy lazy and stupid.

One thing I should like to know is how much of the above itinerary is repetition. I lost my book in Antelope Co. and have been labeling plants from memory so that I don't know whether it is from that or writing it to you once before that I hear everything so clear in my head. I remember everything very well. Smith's book only has dates -- so my memory has to serve for plant localities etc. It is OK there but to my surprise and disgust fails me when I try to remember how far I got in the office the other night . . . . There are myriads of things I could tell -- trouble had with one cuss about wheat must -- with another because we wouldn't join a grand wolf hunt in which all able bodied men for 50 - 60 miles were engaged, etc. etc., but there must be some end to this.

August 15, 1892

(Lincoln, Nebraska)

I haven't told the half of what happened though. My sitting down on a rattlesnake, and some experiences with prairie dog towns were not bad -- I should like to tell you some of them -- writing don't pay.

## APPENDIX D

THE SCHOOL OF THE SOCIAL SCIENCES:  
UNIVERSITY OF NEBRASKA, 1905<sup>1</sup>

To the Honorable, the Chancellor and Regents:

Gentlemen:

After several weeks of careful consideration the following departments, viz: -- American History and Politics, European History, Economics and Sociology, Institutional History, Jurisprudence and Public Law, -- have agreed that an organization of the same into a "School" would be advantageous to the University, as well as to the departments concerned; therefore, they request you to constitute and establish them as "The School of the Social Sciences," in accordance with the general plan herewith appended, subject to such minor modifications in details as it may be necessary from time to time to make.

You are also requested to approve the courses of study as outlined herein, and approved by the faculty of the College of Literature, Science and Arts, and to authorize others to be formed, and changes to be made as future circumstances may demand.

Find exhibits annexed: I. Plan Organization,  
II. Material for Catalogue, III. Courses of Study.<sup>2</sup>

## Exhibit I.

## SCHOOL OF THE SOCIAL SCIENCES

Loose organization plan with departmental integrity.

## I. ORGANIZATION

1. Staff.

- (a) The Chancellor.
- (b) The Dean of the Academic College.
- (c) The instructors in the various departments and teaching fellows.
- (d) Special lecturers.

2. Departments.

- (a) American History and Politics.
- (b) European History.
- (c) Economics, Commerce & Sociology.
- (d) Institutional History.
- (e) Public Law and Jurisprudence.

3. Details of Organization.(a) The Conference

- (1) Membership. All members of the instructional force with equal voice in determining on general plans and measures.
- (2) Meetings. There shall be three regular meetings per year, and called meetings on the request of any two departments.
- (3) Presiding Officer. At regular meetings the heads of departments will preside in rotation. At called meetings the department which requests the meeting will furnish the presiding officer.
- (4) Committees. There shall be two committees elected annually, (1) on courses of study, (2) on ways and means.
- (5) Secretary. The secretary shall be chosen annually, and shall perform the usual duties.

- (6) A majority vote will carry except in questions of internal departmental policy. In such cases any action taken is advisory only except on the consent of the department concerned.

(b) The Assembly

- (1) Membership. All members of the instructional force, all graduate students of the various departments, and such advanced students as may be admitted by vote on nomination of any department.
- (2) Objects. Social and educational. To hear and discuss papers by members of the conference, or by others invited to address it.
- (3) Meetings. Monthly, and on call.
- (4) Presiding officer. The department from which the paper comes to furnish the president of the evening.
- (5) Secretary. A secretary shall be chosen for each evening whose duties shall be to preserve the proceedings of the evening in a book provided for the purpose.

## II. REGISTRATION

Graduate Students whose majors fall within the departments of the school are to be registered as members of the school.

## Exhibit II.

## THE SCHOOL OF THE SOCIAL SCIENCES

## FACULTY

Elisha Benjamin Andrews, LL.D., Chancellor and President of the University Senate.  
Ellery Williams Davis, Ph.D., Dean of the College of Literature, Science, and the Arts.  
Howard Walter Caldwell, A.M., Professor of American History and Politics.  
Fred Morrow Fling, Ph.D., Professor of European History.  
George Elliott Howard, Ph.D., Professor of Institutional History.  
Roscoe Pound, Ph.D., Professor of Jurisprudence and Public Law.  
Edward Alsworth Ross, Ph.D., Professor of Sociology.  
William George Langworthy Taylor, A.B., LL.B., Professor of Political Economy and Public Finance.  
Guernsey Jones, Ph.D., Assistant Professor of European History.  
Clark Edmund Persinger, A.M., Adjunct Professor of American History and Politics.  
Leon Emmons Aylsworth, A.B., Instructor in American History and Politics.  
Laura Belle Pfeiffer, A.B., Instructor in European History.  
Comadore Edward Prevey, A.B., Instructor in Sociology.  
Frances Brown Taylor, A.M., Lecturer in Political Economy and Public Finance.

## GENERAL INFORMATION

The School of the Social Sciences affords the means for advanced study and systematic research in History, Economics, Sociology, Public Law, and related subjects. It provides practical training courses for those desiring to prepare themselves for the professions of Journalism, Law, Diplomacy, and other branches of public service. It accentuates the actual interrelations of the subjects represented by its various constituent departments, thus aiding students so to choose their studies as to make up a well-balanced and effective course. It is the aim of the School especially to foster those studies which tend to raise the standard of good citizenship and to create a loftier ideal of social duty.

Both undergraduate and graduate study is provided for. It is the particular purpose of the School to promote advanced research through the use of the original materials. In the constituent departments the University offers the degrees of A.M. and Ph.D. for the successful completion of the prescribed work. An essential part of this work is the thesis or dissertation, affording a training in scientific writing with a view to publication.

The immediate administration of the School is vested in the Instructional Staff. The requirements for admission are the same as for admission to the College of Literature, Science, and the Arts. Graduate students are registered in the School. There is a Monthly Conference comprising all members of the Instructional Staff, all graduate students of the various departments, and such advanced students as may be admitted by vote on nomination of any department. The purpose of the Conference is social and educational: to hear and discuss papers by members and by others upon invitation.

The following scholarships and fellowships have been established.

(Here follows an exact statment regarding such scholarships and fellowships.)<sup>3</sup>

#### SPECIAL TRAINING COURSES

(Here follows the detailed statement of each of these courses, under the heading: "Course in Preparation for - - - - -".)

#### DEPARTMENTAL COURSES OF INSTRUCTION

(Here follows the detailed statement of the graduate and undergraduate courses in each of the constituent departments of the School. In connection with the courses offered by each department, mention may be made (by number and name of department) of supplementary or accredited courses in other departments.)

Note: The Chancellor consents, if so desired, that all the matter relating to the School shall be printed in a distinct division of the Calendar, similar to the section now devoted to the announcement for the Graduate School.

Notes to Appendix D

1. Regents' Papers, R.G. 1/1/1, University Archives, University of Nebraska-Lincoln. The proposal is undated but was "adopted as a whole and the courses recommended to the Chancellor and the Board of Regents for adoption" on 11 April 1905 (Faculty Minutes, University Archives, University of Nebraska-Lincoln). Later that day, the proposal was sent to the Board of Regents where it "was read, received and placed on file and referred to the chancellor to report at another meeting" (Board of Regents, Minutes of Meetings, 11 April 1905, Reel 2, 1897-1909, University Archives, University of Nebraska-Lincoln). I found no further record of action on the proposal.

2. Exhibit III, Courses of Study, is omitted here. It contains 13 pages of detailed plans of study, organized year-by-year, semester-by-semester for work in (a) Journalism, (b) Combined Six Year Course for Academic and Law Degrees, (c) Four-Year Course in Preparation for Law, (d) Professional Service in Philanthropic Lines, (e) Diplomatic and Consular Service, and (f) Public Service and Business, and (g) Business Career Course. All were proposed as four-year programs except the Combined Six Year Course for Academic and Law Degrees.

3. The list of scholarships and fellowships was not attached as an exhibit. At that time, each department was provided funds for at least one scholar and one fellow with the understanding that these would typically be awarded to graduate students recommended by the department concerned.



APPENDIX B<sup>1</sup>

## ROSCOE POUND'S SOCIOLOGICAL LIBRARY

Introduction

Roscoe Pound was an avid book collector and a voracious reader throughout his school days and later professional career. During his graduate student days he lamented he had no extra money whatever because he had invested all his funds in books. The Pound family placed a high value on books. Pound's mother served on the city library board of Lincoln, Nebraska, from 1880-1890, and when the city appropriated no funds for a librarian in 1892, Sarah Biddlecome Pound took it upon herself to fill in as acting librarian. Roscoe Pound's personal book collection was donated at his death to the Roscoe Pound Foundation. The collection is housed at the American Association of Trial Lawyers, Washington, D.C., where it is maintained intact as a research facility for scholars and members of the legal profession. The card catalog for Pound's large collection was searched during a visit in April 1988 for works authored by prominent sociologists and sociologically significant intellectuals (particularly criminologists well-known in the sociological literature). The following bibliography is the result of that search. Exhaustive claims are not made for

this list. It could undoubtedly be extended by using a more comprehensive list of sociological writers as the basis of a further search. The authors, titles, and publication dates of significant sociological works were recorded from the index catalog to the Pound Collection. These data were verified in the National Union Catalog to produce the following bibliographic entries. Where joint British and American publication was indicated in the National Union Catalog, the American publisher has been cited. Additional, invaluable bibliographic assistance was rendered by Charlotte W. Smith, Legal Information Services Coordinator, at the Association of Trial Lawyers of America.

Examination of the bibliography supports the following generalizations. First, despite Pound's documented mastery of several foreign languages, it is noteworthy that his personal library favored English translations of sociological works if they were originally published in other languages (see, for example, the entries for Durkheim, Freud, Marx, Tarde, and Weber). Second, comparison of publication dates in the National Union Catalog with dates of works in Pound's library demonstrates that he almost always obtained or received first editions of American works that subsequently enjoyed many printings and editions, supporting the thesis that Pound kept relatively well-informed concerning major developments in sociology

into the 1930s. Third, Pound's resources not only covered a wide range of political perspectives, from Marx and the Webbs on the one hand, to Adam Smith on the other, but also contained the major theoretical works of the day. Roscoe Hinkle, in the first chapter of his Founding Theory of American Sociology 1881-1915, stated:

The analysis which is to be reported in the subsequent chapters reveals that the contributions of such early sociologists as Lester Frank Ward (1841-1913), William Graham Summer (1840-1910), Franklin Henry Giddings (1855-1931), Edward Alsworth Ross (1866-1951), Albion Woodbury Small (1854-1926), and Charles Horton Cooley (1864-1929) were consciously and pre-eminently theoretical. These men were the founders of the discipline and its major theoreticians. They wrote what was and is regarded as the general theory of the sociology during its first several decades. (Hinkle 1980: 13).

Of the foundational theorists identified by Hinkle, inspection shows that Pound obtained major works by all six: Ward, Summer, Giddings, Ross, Small, and Cooley. Pound's reading placed him squarely in the midst of informed sociological theory and debate. The modern equivalent to Pound's library of sociological classics would, with little doubt, be the envy of many professional sociologists today.

#### Note for Introduction to Appendix E

1. Portions of this appendix have been published by Vance Bibliographies (Hill 1989c).

**Bibliographic Description of Pound's Sociology Library**

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- 1925     The New History and the Social Studies. New York:  
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- 1926     The Repression of Crime. New York: George H.  
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- 1935     The History of Western Civilization. New York:  
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- 1827 Rationale of Judicial Evidence, Specially Applied to English Practice. 4 vols. London: Hunt and Clarke.
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- 1909     Catechisme positiviste: ou, Sommaire exposition  
              de la religion universelle. New edition with  
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- 1922     Human Nature and Conduct: An Introduction to Social Psychology. New York: H. Holt.
- 1929     Characters and Events: Popular Essays in Social and Political Philosophy. 2 vols. New York: H. Holt.
- 1929     Experience and Nature. New edition. New York: Norton.
- 1931     Philosophy and Civilization. New York: Minton, Balch.
- 1938     Logic: The Theory of Inquiry. New York: H. Holt.

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- 1933     Emile Durkheim on the Division of Labor in Society. New York: Macmillan.

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- 1924     The Belief in Immortality and the Worship of the Dead. London: Macmillan.
- 1926     The Worship of Nature. London: Macmillan.

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- 1914     Psychopathology of Everyday Life. Translation of 4th edition, by A.A. Brill. New York: Macmillan.
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- 1923     Decay of Capitalist Civilization. New York: Harcourt, Brace.
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- 1916     Rest Days: A Study in Early Laws and Morality.  
          New York: MacMillan.

**Westermarck, Edward A.**

- 1891     The History of Human Marriage. 2 vols. New York:  
          Macmillan.
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**Wickersham, George W.**

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## APPENDIX F

TEXT OF  
AGREEMENT BETWEEN MOLLY AND POUND FOR OPERATION OF  
THE CLEVELAND SURVEY OF CRIMINAL JUSTICE, 1921<sup>1</sup>

Dear Dean Pound:

In order to have a permanent and authoritative statement of the conditions under which the Cleveland Foundation Committee has entered into an agreement under which you are to conduct a Survey of the Administration of Punitive Justice in Cleveland. I am authorized by the Committee to submit the conditions under which the survey is to be conducted:

1. The scope of the Survey is indicated by the outline submitted by Dean Pound and Professor Frankfurter on Saturday January 29th, 1921, minor rearrangements to be made without consulting the committee.

2. All of the reports must be complete and ready for publication by June 1st, 1921, with the exception of the summary which is to be ready for publication by June 15th, 1921.

3. In order to give adequate publicity to the reports they should be given to the public at intervals of at least a week, the first to be given out not later than May 10th and the final one not later than June 20th. At the time of giving a report to the public there should be a copy in typewritten form and a printed summary for the public.

4. The total amount to be spent in making this survey is to be \$25,000. This is to include printing of reports, but not the honoraria nor the expenses of the two directors.

5. The following rules will apply to the selection and compensation of personnel in the various divisions:

a. All division chiefs shall be appointed by the directors of the Survey who shall also fix their compensation.

b. The assistant chief in each division shall be appointed by the directors of the Survey upon the recommendation of the chief of the division.

c. The following shall be detailed from the office of the director of the Foundation for service in the survey:

C.E. Gehlke to be chief statistical officer  
of the Survey.

H.B. Flinkers, his assistant.

The salaries of Mr. Gehlke and Mr. Flinkers to be paid from the budget of the office of the Director of the Foundation.

d. All expenditures are to be made by the Director of the Foundation upon the recommendation of one of the Directors of the Survey.

e. All appointments of staff workers on the Survey other than that of Division Chiefs and their first assistants shall be made by the Director of the Foundation. This power carries with it the determination of compensation and the power of dismissal.

6. In fixing the compensation of the staff members the following rule will be followed:

a. Division heads should be paid on a per diem basis because of the short periods during which they are to be employed.

b. All others are to be paid on a weekly or monthly basis.

c. The Directors of the Survey or the chief of the appropriate division will report to the director of the Foundation the salary rates of division heads and first assistants while all staff members will report time spent on work for the survey on blanks provided for the purpose. Expense accounts will be likewise reported upon forms supplied by the Director of the Foundation.

d. The legitimate expenses chargeable to the Survey by the directors of the Survey and the division chiefs will be as follows:

i Traveling expenses, including meals to and from Cleveland and upon all trips made for the Survey.

- ii Hotel room charges while in Cleveland.
- iii Expenses other than meals while engaged in the work of the Survey.

e. Expenses for all other staff members chargeable to the Survey to be as follows:

- i Traveling expenses including meals to and from Cleveland on all trips made for the Survey.
- ii Expenses attendant upon the work of the Survey such as carfare, etc.

7. The report on each subject will be submitted in manuscript first to the directors of the Survey and after discussion by the directors and chief, to the committee for criticism and suggestion. The final report is to be in such form and with such subject matter as agreed upon by the directors and chief and the Foundation committee, but in case of failure to agree as to subject matter, the final decision shall be left with the directors and the specialist concerned and no portion of the report shall be altered or omitted without their consent.

As to form of statement and general arrangement of the report, each chiefs' report is subject to editing under the direction of the Survey. This editing includes the right of the directors to utilize only such portions of each report as are necessary to present all pertinent facts and conclusions on the subject assigned to a particular chief. This allows the directors to eliminate from one report matter that might be covered in another and to insure condensed and unified reports. This is not possible if each author writes all he wishes about his special field for inclusion in the final reports. No statement or conclusion is to be inserted in any report that the author has not himself expressed.

The Directors of the Survey and each chief is to do the work on the understanding that, after the inquiry is finished and the reports published, they are entitled to use facts or material collected in the course of the inquiry for purposes of study, general discussion and publication as each may choose for his own purposes.



8. The publication of the reports, the methods in which they are presented to the public and all publicity upon the Survey during its progress shall be entirely within the control of the Director of the Foundation. All members of the staff should be warned by the Directors of the Survey against giving any facts to the public except through the office of the Director of the Foundation or with his consent. This condition is very important.

I am writing a letter similar to this to Professor Frankfurter and I trust that these conditions meet with your joint approval.\*

Very truly yours,

[Raymond Moley]  
Director

#### Notes for Appendix F

1. Moley to Pound, 17 February 1921, Roscoe Pound Papers, Box 206, Folder 2, Harvard Law School Library.
2. Pound's acceptance of the conditions was sent to Moley on 18 February 1921, Box 206, Folder 2, Roscoe Pound Papers, Harvard Law School Library.

## APPENDIX G

POUND'S SURVEY OF JUSTICE IN CHINA:  
REPORT ON WORK OF 1947-1948<sup>1</sup>

Sir:

I have the honor to submit the following report on my work since my last general report.

Lectures and Addresses

1. Problems of a Modern Judiciary. Delivered before a Conference of Judges and Officials of the Ministry of Justice, November 5, 1947. I understand this has been translated into Chinese and published.

2. Four lectures delivered at the National Chengchi University, December 5, 17, 19 and 27, 1947. They have been published by the University. The titles are:

- I Comparative Law and History as Bases for Chinese Law
- II Unification of Interpretation and Application of the Codes
- III Development of a Chinese Constitutional Law
- IV The Judicial Office in China

3. What Can Western Experience Teach Us for Legal Education in China? Address before a Conference of Law Teachers and Officials of the Ministry of Education, February 4, 1948.

4. Three lectures at the National Central University, delivered March 25, 30, and April 2, 1948. The subject is Rights and the titles are:

- I Sociological View: The Securing of Interests
- II Analytical View: Juristic Conceptions Securing Interests
- III Law and Morals

5. Juvenile Courts and Juvenile Delinquency. Speech at a dinner of the Child Guidance Clinic of the Community Church, Shanghai, June 16, 1948.

6. Three lectures at the Law School of the National Chekiang University, June 19 and 20, 1948. The subject is Methods and Schools of Jurisprudence. The titles are:

- I The Nineteenth-Century Schools
- II Social Philosophical and Realist Schools
- III Sociological Jurisprudence

7. Address: The Jurist and the Practicing Lawyer in the Advancement of Justice. Delivered before a joint meeting of the Hangchow Chapter of the China Law Association and the Hangchow Bar Association.

8. The Socialization of Law. A lecture before six Shanghai Law Schools at the Law School of Aurora University, June 29, 1948.

9. The Official Curriculum for Law Schools. Speech before a conference on Legal Education under the auspices of the Ministry of Education, July 1, 1948.

10. American Experience of Bar Associations. Address before the organization meeting of the National Association of Bar Associations, September 9, 1948.

11. I have written three new lectures for delivery at law schools:

- I History and Standards of the Legal Profession
- II Comparison of Systems of Law
- III Methods of Teaching and Studying Law

12. Sociology and Jurisprudence. Address before the annual meeting of the Chinese Sociological Society, October 2, 1948.

I make no mention of many informal or offhand speeches on various occasions.

### Reports

1. Second Report for 1947, with suggested program and preliminary project of a Survey of the Administration of Justice. Submitted September 29, 1947.

2. Second Report on Legal Education -- Modern Tendencies in Legal Education and their Bearing on Chinese Legal Education. Submitted October 20, 1947. Three reports in

preparation for the Conference of judges, procurators, and officials of the Ministry, November 5, 1948 -- submitted October 29, 1947.

3. Report on Questions on Article 8 of the Constitution.
4. Report on Questions under Article 24 of the Constitution.
5. Report on Simplification of Procedure. Parts of these have been published in Chinese translation and parts in English.
6. Brief Report to the Ministry of Education recommending continuance of the sectional system in law schools. Submitted April 17, 1948.
7. Report on the Official Curriculum for Law Schools, submitted April 30, 1948.
8. Report on Principles of and Draft of Project for a Juvenile Delinquency Law. Submitted October 4, 1948.

#### CHAPTERS OF INTRODUCTORY VOLUME OF INSTITUTES OF CHINESE LAW

I have written the first chapter and two sections of the second chapter of the projected volume as follows:

- Chap. I. Introduction to the Science of Law (150 pp of MS).
- Chap. II, section 3. Sketch of the History of Roman and Modern Continental Law -- introduction to the modern codes (200 pp of MS).
- Chap. III, section 5. Brief Sketch of the History and System of Anglo-American Law -- as contributing to Chinese Law (150 pp. of MS).

#### Papers

1. Reconstruction in China. Harvard Law School Record, March 2, 1948.
2. Reconstruction in the Administration of Justice in China. American Bar Association Journal, June 1948.

3. Comparative Law and Legal History in Chinese Law. Harvard Law Review, July , 1948.
4. Chinese Constitutional Law. New York University Law Quarterly, July, 1948.
5. Roman Law in China. Sent July 14, 1948, to Professor Salvatore Riccobono at Rome for the volume in honor of Professor Koschaker.
6. Basic Ideas and Analogies in Roman and English Law. Written for Dr. Shelley Sun's Journal of Legal Science. Sent, September 2, 1948.
7. Methods of Keeping the Law Up to Date. Read at the meeting of the World Conference of Lawyers at The Hague, August 17-22, 1948. Discusses the importance of a Ministry of Justice in comparison with the Anglo-American system of unofficial initiative.
8. Progress of the Law in China. Read at Meeting of the American Bar Association at Seattle, September 7, 1948. Published in 23 Washington Law Review and State Bar Journal.
9. The Chinese Codes in Action. Sent to Professor Mitchell Franklin at New Orleans for the Centennial volume of Tulane University.

Also I sent a brief notice of the organization meeting of the National Association of Bar Associations to the American Bar Association Journal and am advised it will appear in the October, 1948, number.

I have only listed papers that have to do with law and the administration of justice in China.

### Projects

Sketch of a Program for 1947-1948: Outline of Work Proposed for the Year. Submitted September 29, 1948.

Draft of Project for a Survey of the Administration of Justice in Eastern China. Submitted December 30, 1947.

Revised Plan for a Survey of the Administration of Justice in Eastern China. Submitted January 22, 1948.

### Questionnaires

Questionnaire in preparation for report on legal education. Submitted October 10, 1947.

Full set of questionnaires in preparation for the Survey, as follows:

1. Questionnaire for procurators.
2. Questionnaire for judges.
3. Questionnaire for teachers of criminal law.
4. Questionnaire for practising lawyers.
5. Questionnaire for physicians -- suggested sent to medical societies.
6. Questionnaire to chambers of commerce, civic clubs, newspapers, submitted January 16, 1948.

Draft Requests to Other Departments for cooperation, information, and available statistics in preparation for the Survey. Submitted January 24, 1948.

Questionnaire for teachers of civil law. Submitted April 30, 1948.

### Miscellaneous

Bibliography of American Law for the Ministry of Justice. Submitted April 17, 1948.

### Conferences, Inspections, and Field Work for the Survey

After submission of the first draft project for the Survey of the Administration of Justice in Eastern China, Dr. Yang and I had frequent conferences as to methods and details. I speak here only of conferences with the staff of the Survey or in the course of the field work.

Before field work began it was necessary, in order to avoid duplication of effort, to ascertain what statistics and other pertinent material was available in the Ministry. This was attended to by Dr. Yang. I had no part in it beyond some suggestions as to what was to be looked for.

On March 6, 1948, together with Dr. Yang, I held a conference with Professor T.V. Chen, Judge C.C. Feng, and Judge P.C. Tao, who had been appointed assistants. We went over the plan in detail, and I explained the purpose as to

each point, and went over the work to be done by each as well as the scope and method of the Survey as a whole.

Field work began in Nanking on June 7. In the morning we inspected the prison. In the afternoon we visited police headquarters and after looking over the facilities and methods of criminal investigation and the equipment and method of temporary detention, had a conference with the police authorities as to cooperation of police, procurators, and judges. On June 8, visit the District Court, look into equipment, records, statistics, volume of business, time of pendency of cases, etc. In the afternoon inspect the House of Detention. On June 9, visit the High Court and make full inspection and inquiry. On June 10, visit the National Police Administration and the Criminal Investigation laboratory.

On June 13, I went to Shanghai with Dr. Yang, Assistant Director and a staff of fifteen. On the morning of June 14, we visit the High Court and look over equipment, library, records, statistics, method of work, and the clerical staff and their work. Particular inquiry was made as to the volume of work, how long cases are pending before final disposition, and cooperation of courts and police. In the afternoon we visited the District Court in the same way. On June 15, in the morning we visited and thoroughly inspected the District Court's House of Detention and in the afternoon thoroughly inspected the prison. In the evening a number of lawyers and business men called on me with complaints about the courts. I asked them each to send me a full written statement which three of them did later. Their statements are not specific. On June 16, in the morning we visit police headquarters and inspect the quarters for temporary detention, and equipment for criminal investigation. In the afternoon we visit the headquarters of the Social Affairs Administration and discuss cooperation with courts and police. We then visit and inspect the Municipal Reformatory for Juvenile Delinquents. On June 17, we have a conference with the judges of the High Court on civil procedure followed by a conference with the judges and procurators on criminal procedure. We go over the questionnaires on these subjects and discuss the answers.

On June 18 we go to Hangchow. In the evening a number of law teachers call and I discuss questions of law teaching with them. On the 19th and 20th I lecture at the Law School of the Chekiang National University, while the staff go over the questionnaires and answers. On June 21 we visit the High Court and District Courts using method already

described. On June 22 we inspect the prison. On the 23rd we inspect the Reformatory. On the 24th we visit police stations, provisions for temporary detention, and Military House of Detention. In the afternoon we hold a conference of judges, procurators, and police authorities. I make an introductory speech explaining the purpose, scope and method of the Survey. On June 25 we hold a conference with judges, procurators and clerks -- a long conference lasting four and one half hours. I make the opening speech explaining the questionnaire. On June 26 we hold a conference of the staff dividing it into three sections to visit District Courts in Chekiang Province.

On August 1, Dr. Yang and I and eight assistants go to Soochow. On August 2, while the staff go over answers returned to questionnaires, Dr. Yang and I visit the hospital which serves the prison. In the afternoon we hold a conference with the judges and procurators. I make the opening speech as above described. On August 3, in the morning we visit the High Court and in the afternoon visit the District Court and inspect the House of Detention. On August 4, we inspect two prisons. In the afternoon we hold a conference of judges, procurators and clerks of the High Court. I make the opening speech on the purposes, scope, and method of the Survey. On August 5, in the morning we visit the National College of Social Education. In the afternoon we hold a conference with the judges, procurators, and officials of the District Court. I make the opening speech as above. On August 6, we hold a further conference with the judges, procurators, and officials of the District Court. I speak on the method and purpose of the questionnaires. In the evening we attend a dinner of lawyers and business men. I speak on the importance, purpose, and method of the Survey. On August 7, there was a conference with the staff.

On August 8, we went to Wusih. On August 9, in the morning we visit the District Court and inspect the House of Detention and Prison. In the afternoon we visit police headquarters, confer with the police authorities, and go to the headquarters of the gendarmes. On August 10, in the morning we go over the statistics and records of the District Court. In the afternoon we go over the answers to the questionnaires. On August 11, we hold a conference with judges, procurators, clerks and officials. I make the opening speech. At noon there was a luncheon of the Bar Association and discussion of the administration of justice as viewed by the practising lawyers. After the luncheon Dr.



Yang and I go to visit district courts in the vicinity of Wusih.

At Chinkiang on August 12, in the morning we call on the Commissioner of Social Affairs. In the afternoon we visit the Branch High Court and District Court. On August 13 in the morning we inspect the House of Detention and the Prison. In the afternoon we visit the Special Branch High Court for Criminal Cases. On August 14, in the morning there is a conference with the assistants. In the afternoon we hold a conference with the judges, procurators, and officials of both courts. I make the usual opening speech. On August 15, I return to Nanking. Dr. Yang and staff go to district courts north of the Yangtze, returning to Nanking on August 21.

#### Acknowledgment

It would be highly unfair and ungrateful to close this report without testifying to the cordial and effective cooperation of Dr. Yang during the whole time it covers. He has acted as guide, interpreter, and invaluable source of information as to things which a foreigner must but cannot expect unaided to know as to Chinese customs and affairs. The work of the Survey would hardly have been possible without his zealous and intelligent participation.

Dated October 6, 1948

To His Excellency  
Dr. Kwan-sheng Hsieh,  
Minister of Justice

Respectfully submitted,  
Roscoe Pound

#### Note for Appendix G

1. Original in Paul Sayre Collection, University Archives, University of Iowa, Iowa City.

**BIBLIOGRAPHY****A. Manuscript Collections****Cambridge**

Harvard Law School Library

-- Roscoe Pound Papers

-- National Commission on Law Observance and Enforcement

Harvard University Archives -- Pusey Library

-- Talcott Parsons Papers

Radcliffe College, The Arthur and Elizabeth Schlesinger  
Library on the History of Women in America

-- Ethel Sturgess Dummer Papers

**Chicago**

University of Chicago, Regenstein Library, Special  
Collections

-- Grace and Edith Abbott Papers

-- Ernst Freund Papers

University of Illinois at Chicago, University Library, Jane  
Addams Memorial Collection

-- Jane Addams Papers

-- Hull-House Bulletin

**Evanston**

Northwestern University, Northwestern University Library

-- John H. Wigmore Papers

**Iowa City**

University of Iowa, University Archives

-- Paul Sayre Collection

**Laramie**

University of Wyoming

-- Edith and Frederic Clements Papers

Lincoln

State Archives, Nebraska State Historical Society

- Nathan Roscoe Pound Collection
- Olivia Pound Collection
- Louise Pound Collection
- Laura Biddlecombe Pound Collection
- Nebraska State Historical Society, Minutes
- William Graham Langworthy Taylor Collection
- Hattie Plum Williams Collection
- T.F.A. Williams Collection

University of Nebraska-Lincoln, University Archives

- Chancellors Papers, Benjamin Andrews
- Department of Botany, Records of the Botanical Seminar
- Department of Botany, Charles E. Bessey Papers
- Department of History, George E. Howard Papers
- Department of Sociology, Comodore E. Prevey Papers
- Faculty Senate, Minutes
- Roscoe Pound Bibliography and Biographical File
- Regents Papers

Madison

State Historical Society of Wisconsin

- Richard T. Ely Papers
- Edward A. Ross Papers

Washington, D.C.

Library of Congress

- Felix Frankfurter Papers
- W.E.B. DuBois Papers

U.S. National Archives

- National Commission on Law Observance and Enforcement

B. Special LibrariesAnn Arbor

University of Michigan, College of Law Library

Cambridge

Harvard University Law School Library

Lincoln

University of Nebraska-Lincoln

-- Law College Library

-- Life Sciences Library

Madison

University of Wisconsin

-- College of Law Library

Washington, D.C.

American Association of Trial Lawyers

-- Roscoe Pound Library

C. Newspapers and Local Publications Read

Cleveland Plain Dealer (Cleveland, Ohio)

The Courier (Lincoln, Nebraska)

Daily Nebraskan (University of Nebraska)

Graduate Bulletin (University of Nebraska)

Hesperian Student (University of Nebraska)

Lincoln Star (Lincoln, Nebraska)

Nebraskan-Hesperian (University of Nebraska)

The Sombbrero (University of Nebraska)

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D. Photograph CollectionsLincoln

Nebraska State Historical Society, Reference Room

-- Pound Family Photographs

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